

***United States Court of Appeals
for the Second Circuit***

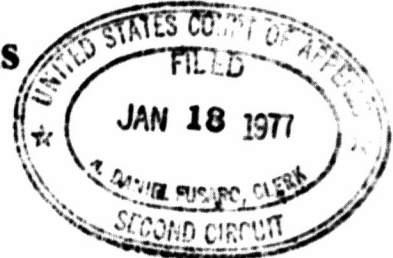


**SUPPLEMENTAL
APPENDIX**

ORIGINAL

76-7452

**United States Court of Appeals
For the Second Circuit**



GERTRUDE J. BONIME and LILLIAN OLDEN,

Plaintiffs-Appellees,

-against-

**JOHN C. DOYLE, WILLIAM M. WISMER
and CANADIAN JAVELIN LIMITED,**

Defendants-Appellees,

-against-

GUARDIAN MANAGEMENT, S.A.,

Claimant-Appellant,

SAMUEL H. SLOAN,

Member of the Class-Appellant.

*On Appeal from the United States District Court
Southern District of New York,*

SUPPLEMENTAL APPENDIX

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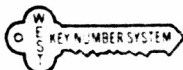
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SAL
DECISION OF DISTRICT COURT DATED JUNE 30, 1976
416 FEDERAL SUPPLEMENT



Gertrude BONIME and Lillian
Olden, Plaintiffs,
v.
John C. DOYLE et al., Defendants.
No. 73 Civ. 5117.
United States District Court,
S. D. New York.
June 30, 1976.

Class action was brought on behalf of buyers of corporate stock against corporation and two individuals involved in management of corporation to recover for alleged securities violations. Application was made for approval of proposed settlement. The District Court, Lasker, J., held that where recoverable damages were somewhere between 2.5 million dollars and something less than 12.8 million dollars, given the complexities and uncertainties confronting plaintiffs in pursuing litigation, and time and expense entailed, proposed settlement, whereby defendants would pay \$1,350,000 into settlement fund with \$260,000 to be paid out of fund for plaintiffs' counsel, was reasonable.

Settlement approved.

46. Of the several motions taken along with this case, only one remains to be disposed of: plaintiffs' motion for expenses in attendance at a deposition taken by defendants in New York. Under Rule 30 of the Federal Rules of Civil Procedure, the granting of such expenses is left to the sound discretion of the trial court. The Court notes that the cross-examination of Dr.

1. Federal Civil Procedure \approx 1699

At the heart of analysis of proposed settlement of class action is evaluation of strength of plaintiffs' case; this requires consideration both of likelihood of establishing liability and consequent probable reward in damages, balanced against the amount offered in settlement. Fed. Rules Civ. Proc. rule 23(e), 28 U.S.C.A.

2. Federal Civil Procedure \approx 1699

In analyzing proposed settlement of class action, considerations of conduct of settlement proceedings are relevant to determination of fairness of the plan. Fed. Rules Civ. Proc. rule 23(e), 28 U.S.C.A.

3. Federal Civil Procedure \approx 1698

Where plaintiffs' motion for class determination was conditionally granted five months before settlement of class action, such class determination would remain in effect if settlement were disapproved, and class members received opportunity to appear to challenge any aspect of proposed settlement, tentative settlement class was not formed, and notice of proposed settlement was not inadequate for failure to inform class of use of tentative settlement class procedure. Fed. Rules Civ. Proc. rule 23(e), 28 U.S.C.A.

4. Federal Civil Procedure \approx 1699

Where notice of proposed settlement of class action revealed existence of two other actions generally involving same issues, alleged inaccuracy of characterization of one of such actions as "dormant" was not a misrepresentation sufficient to undermine settlement. Fed. Rules Civ. Proc. rule 23(e), 28 U.S.C.A.

5. Federal Civil Procedure \approx 1700

Requirement for objection to proposed settlement of class action, that class member file notice of intention to appear, statement of basis for objection and memoran-

Sorarides at his deposition in New York by plaintiffs does not fall within the mandatory purview of F.R.C.P. 26(b)(4)(C). Accordingly, in the exercise of its discretion, this Court hereby denies plaintiffs' motion for expenses of attendance at the deposition of Dr. Sorarides in New York.

dum of supportive authorities, and requirement for opting out, that class member provide data as to his purchases and sales of defendant corporation's stock, did not bar approval of settlement if settlement was found to be otherwise fair and reasonable. Fed.Rules Civ.Proc. rule 23(e), 28 U.S.C.A.

6. Federal Civil Procedure ≈ 1699

In appraising proposed settlement of class action, when confronted with contentions that settlement was collusive or the product of opportunity for coercion arising from fact that more than one class action was pending against defendant on same cause of action, trial court must assume burden to insure that interests of individual class members are protected and be "doubly careful" in assessing merits of plan; but it would not be in interests of class to disapprove settlement merely because possibility of abuse existed if proposal itself is fair and reasonable. Fed.Rules Civ.Proc. rule 23(e), 28 U.S.C.A.

7. Damages ≈ 18

Plaintiff can recover only that part of a given loss which is attributable to defendant's wrongful conduct.

8. Federal Civil Procedure ≈ 1699

In hearing on proposed settlement of class action brought against corporation for alleged securities violations, calculations submitted by settlement opponents to estimate the aggregate amount of money investors lost during class period were inapplicable to question of fairness of proposed settlement, in view of fact that such calculations did not reflect any consideration of causes of the loss. Fed.Rules Civ.Proc. rule 23(e), 28 U.S.C.A.

9. Fraud ≈ 59(3)

Securities Regulation ≈ 154

By "out of pocket rule" of damages applied in actions for common-law deceit and rule 10b-5 violations, a plaintiff's damage is determined as of date of purchase by subtracting actual value of security from purchase price. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).

See publication Words and Phrases for other judicial constructions and definitions.

10. Federal Civil Procedure ≈ 1699

Extreme difficulty in reaching a fair damage figure if class action for alleged securities violations were tried, and liability shown, was itself a factor which heavily commended settlement, as was prospect of having to determine damages on individual basis if it were ultimately concluded that class calculation was simply impossible. Fed.Rules Civ.Proc. rule 23(e), 28 U.S.C.A.

11. Federal Civil Procedure ≈ 1699

Where recoverable damages in class action for alleged security violations were somewhere between 2.5 million dollars and something less than 12.8 million dollars, given the complexities and uncertainties confronting plaintiffs in pursuing litigation, and time and expenses entailed, proposed settlement, whereby defendants would pay \$1,350,000 into settlement fund with \$250,000 to be paid out of fund for plaintiffs' counsel, was reasonable. Fed.Rules Civ.Proc. rule 23(e), 28 U.S.C.A.

12. Securities Regulation ≈ 119

Federal securities laws preclude relief to buyers of stock who continued to hold stock in reliance on alleged misrepresentations of corporation.

13. Federal Civil Procedure ≈ 1699

Provision of proposed settlement of class action for alleged security violations allowing defendants to choose among themselves which defendant would put up what portion of settlement fund did not violate plaintiffs' interests. Fed.Rules Civ.Proc. rule 23(e), 28 U.S.C.A.

Wolf, Popper, Ross, Wolf & Jones, New York City (Benedict Wolf, Robert M. Kornreich, New York City, of counsel), for plaintiffs.

Diamond & Golomb, P. C., New York City (Irving Golomb, New York City, of counsel), Steptoe & Johnson, Washington, D. C. (George B. Mickum, III, Washington, D. C., of counsel), for defendant Canadian Javelin Limited.

Martin Ozer, New York City, Moses Krilov, Cleveland, Ohio, for defendants John C. Doyle and William M. Wismer.

Squadron, Ellenoff & Plesent, New York City, Robert Plotkin, Aram A. Hartunian, Chicago, Ill., for objectors.

LASKER, District Judge.

This is an application pursuant to Rule 23(c) of the Federal Rules of Civil Procedure for approval of a proposed settlement of a class action. The merits of the plan are vigorously pressed by counsel for the plaintiff class and defendants and are challenged with equal strength by various objectors, some of whom have an interest in two similar suits currently pending in the Illinois state and federal courts. Upon detailed review of the arguments and the testimony at hearing and the documents submitted by each side, it is our conclusion that the settlement is fair and reasonable and should be approved.

I.

The Nature of the Action, the Parties and the Proceedings to Date

This action was commenced in December, 1973 against Canadian Javelin Limited (Javelin or the company), a Canadian corporation primarily engaged in the business of exploring and developing natural resources whose stock is traded on the American Stock Exchange, and two individuals who figure prominently in its management. The complaint, filed on behalf of all purchasers of Javelin stock from a point in early 1969 to late 1973, alleges violations of Sections 5 and 17 of the Securities Act, 15 U.S.C. §§ 77e and 77q, Section 10(b) of the Securities Exchange Act, 15 U.S.C. § 78j(b) and Rule 10b-5, 17 C.F.R. § 240.10b-5 by means of a course of conduct designed artificially to inflate the price of the company's stock which was never registered pursuant to Section 5 of the Securities Act.

The plaintiffs, Gertrude J. Bonime and Lillian Olden, purchased shares in Javelin during the period of the alleged wrongdoing. The individual defendants are John C. Doyle, director, controlling shareholder and Chairman of the Executive Committee of Javelin, and William Wismer, director and President of the company.

The amended complaint particularly charges the defendants with a series of material misrepresentations and omissions in annual reports, press releases and filings with the Securities Exchange Commission and the American Stock Exchange designed to deceive the investing public with regard to Javelin's financial condition and business prospects. (§ 7) The allegations focus on two projects with which the company was involved during the period in question: a plan to develop a major facility in Newfoundland for the production of linerboard (the linerboard project) and a plan to exploit mineral deposits in the Cerro Colorado area of the Republic of Panama (the Cerro Colorado project). In connection with the linerboard project, the amended complaint alleges that during the planning and construction stage the company issued a continuous series of materially misleading statements as to the true size and anticipated profitability of the project, the true cost and extent of necessary financing involved and "serious obstacles" encountered in bringing the project to fruition, particularly disputes with the government of Newfoundland. (§ 9) Secondly, it is alleged that at a later time the company misrepresented the status of \$4,300,000, asserted to be due from the Newfoundland government in payment for the subsequent sale of the entire linerboard project to the government by showing the amount as a current asset, when in reality the obligation was disputed and the company had failed properly to pursue the matter. The defendants are also charged with engaging, during the same period, in a scheme to deceive investors as to the Cerro Colorado project, which centered on a large copper discovery in Panama, by issuing false and misleading statements as to the company's exploitation rights, the related feasibility studies and the financial arrangements to produce and market the initial output of the project. (§ 12) The plaintiffs allege that the company's right to develop the ore deposits was highly speculative, that no feasibility studies or arrangements to finance the project existed and that marketing plans were still in the negotiation stage. (§ 14) It is as-

serted that the above misstatements or omissions resulted in artificially inflated prices for Javelin stock throughout the period and that the plaintiffs and all other purchasers of the stock would not have been required to pay as much as they did for their stock if the true facts had been known. (" 16)

The defendants deny all the material allegations.

In April, 1974 plaintiffs moved for and obtained an order directing that a class action determination be made by July 14. By stipulation and order the parties obtained three extensions of this time limit, however, because they required further discovery to reach a judgment as to the appropriate boundaries of the class. When the motion for class action determination was filed in January, 1975, the defendants offered no objection on the condition that the determination would be preliminary and they reserved their right to petition the court to alter, amend or revoke the determination pursuant to Rule 23(c)(1), Federal Rules of Civil Procedure. On the basis of the discovery to that point the plaintiffs proposed a class to include all purchasers of Javelin stock between the dates of April 30, 1969, when the 1968 annual report containing the first allegedly misleading statements was issued, and October 25, 1973, the day on which the American Stock Exchange suspended trading in the company's stock for failure to make full disclosure concerning the copper project in Panama. The latter date was selected because while the suspension was in effect the Securities Exchange Commission filed an injunctive action against the defendants which resulted in a consent judgment providing, *inter alia*, for full disclosure of the company's affairs.

1. From the affidavit of Robert M. Kornreich, one of plaintiffs' attorneys, it was apparent that the requirements of Rule 23(a) and (b)(3) were met: the class of purchasers of Javelin stock numbered in the thousands, making joinder impracticable; virtually all the questions of law and fact, with the exception of calculation of damages, are common to the class and, thus, clearly predominate over individual issues; the claims of Bonime and Olden are typical of the class, as Bonime bought her shares in May,

Pursuant to this judgment and prior to the resumption of trading on January 25, 1975, the company issued a letter to its stockholders to comply with the SEC order. On the strength of the presentation of the parties in the moving papers¹ the motion to determine the class was granted on February 7, 1975. Notice to the class was stayed pending further discovery which might affect the parameters of the class or indicate the desirability of creating sub-groups within the class. See, *Wolfson v. Solomon*, 54 F.R.D. 584, 593 (S.D.N.Y.1971); *Fischer v. Kletz*, 41 F.R.D. 377, 386 (S.D.N.Y.1966).

The parties submitted the proposed settlement for the court's consideration in July, 1975. By this time, more than one and a half years since the complaint was filed, considerable discovery had taken place. Plaintiffs' attorneys had examined numerous documents relating to the events which form the subject of the complaint, received answers to one set of interrogatories and deposed four persons who played key roles in the linerboard project, the Cerro Colorado project, or both, including the defendant John Doyle. (" 14, 18 and 21, Wolf Affidavit, October 8, 1975) On the basis of the facts revealed by this discovery, which indicated that there would be some problems of proof with regard to both liability and damages, plaintiffs' attorneys explored the possibility of settlement. Counsel for the defendants, for their part, though steadfastly denying the merits of the allegations, were also desirous of compromising the action to avoid the expense of continued litigation.

Being satisfied that the proposed settlement was worthy of consideration, the court ordered that notice be given of the class determination and of a hearing to be

1970 at a time when the company was actively engaged in the development of the linerboard project and Olden invested near the other end of the class spectrum, when the additional assertedly fraudulent activity regarding the Cerro Colorado project took place; the plaintiffs' attorneys are eminently well qualified, and experienced counsel in litigation of this nature, and the class action was superior to other available methods for adjudication of this controversy.

held on the fairness of the settlement. The order provided for notice by mail and publication. Prior to the hearing the proponents of the compromise filed affidavits and memoranda in support thereof and a total of eleven class members who opposed it submitted their objections in writing.

At the hearing on the merits of the settlement the proponents offered the expert testimony of Dr. Roger F. Murray, S. Sloan Colt Professor of Banking and Finance at the Graduate School of Business and Finance at Columbia University, on the question of provable damages should the plaintiffs prevail on the issue of liability at trial. Several objectors appeared and spoke against the settlement. Those objectors who have an interest in the concurrent Illinois litigation appeared by counsel and strenuously argued that the proposal be disallowed. Their counsel cross-examined Dr. Murray and presented a computer study to demonstrate that the potential recovery of the class was far in excess of that estimated by Dr. Murray and the proponents, and that the sum offered in settlement was therefore grossly inadequate. Both the proponents and the objectors have, with court permission, submitted further affidavits, briefs and data in support of their respective positions.

II.

The Proponents' View

The affidavit of Benedict Wolf, lead counsel for the plaintiff class, sets forth in detail the facts upon which he contends that the settlement is fair. It is his view that, as discussed in detail below, it will be difficult to establish liability with regard to the first portion of the class period and that the possibility of success is more promising, but by no means assured, as to the later part. Even assuming that liability is shown, however, he appears generally to accept the analysis of the defendants' expert, Dr. Murray, who calculates that the maximum recoverable damages to this class is \$2.5 million. In a separate affidavit, Dr. Murray sets forth the basis for this state-

ment. A summary of their presentations follows:

Discovery revealed that the allegations of the complaint relate to two distinct segments of time. During the first portion of the class period the defendants' activities centered on the development of the linerboard project; during the later part, the focus of activities was the Cerro Colorado project, and also the alleged misrepresentation as to the payment for the linerboard sale took place. With regard to the first period, the defendants are charged with misleading the public as to the prospects and progress of the linerboard project, undertaken with the consent and close involvement of the government of Newfoundland. The plaintiffs learned, however, that during this period the project in fact proceeded substantially on schedule and within the original budget estimates; that such obstacles as existed were arguably insignificant; and, although not disclosed by the company until issuance of a letter to its shareholders of May 31, 1972, the difficulties were the subject of a great deal of publicity in both Canadian and American media. Finally, it is asserted that Javelin's silence on the problems, which grew out of a dispute with the government that had developed into a political controversy in the Province between the two leading political parties, could very plausibly be defended as an exercise in sound business judgment as the project was dependent for its ultimate success on the good will of the government. Discovery also revealed that no liability could be established as to the Section 5 claim since there had been no public offerings of the unregistered securities within the applicable limitations period. ("51-63; 82-84, Wolf Affidavit, October 8, 1975)

The case appears stronger with regard to the period following the May 31 disclosure, during which the bulk of the alleged wrongdoing occurred. In Wolf's view, however, even here the allegations that the company misrepresented the existence and content of encouraging feasibility studies by outside experts regarding the prospects for the Cerro Colorado project proved to be without

foundation in fact. (" 36-39; 79, Wolf Affidavit, *supra*) He professes greater confidence in proving misrepresentations and omissions as to the other aspects of this project, the status of the exploitation rights and of the preliminary marketing arrangements and an episode regarding the premature announcement of another concession in Panama, as well as the treatment of the \$4.3 million owing from the government of Newfoundland for the purchase of the linerboard project. His discussion of the facts, however, conveys the distinct impression that any assessment of success must take serious consideration of the defendants' assertion of the truth of all the statements made, or the existence of a reasonable basis for them which seriously undercuts a claim of willfulness or recklessness.

For example, the allegation of misrepresentation with regard to the marketing arrangements for the Cerro Colorado project was undercut by the fact that very serious discussions were indeed underway with a major British concern at the time of the allegedly misleading releases which, though arguably unduly optimistic—or rather, not fully enough qualified—made no untrue statements, were by no means manifestly misleading, and in fact did not, as alleged, convey the false impression that marketing arrangements had been solidified. (" 41-47; 81, Wolf Affidavit, *supra*) At trial the plaintiffs will thus have to convince a jury that the statements violated the law in a somewhat subtle degree, obviously a far more risky proposition than proving a patent lie. Similar problems existed particularly with regard to a claim that the company had prematurely announced the acquisition of another mineral concession in Panama. (" 48-50; 80, Wolf Affidavit, *supra*)

Even assuming that the plaintiffs do succeed in establishing securities law violations, they must, of course, prove damages. According to Wolf, the weakest aspect of the case on damages is, again, the early part of the class period, where proof of any damage at all is made difficult by the fact that most if not all of the allegedly withheld information was publicly available

through the media due to the highly publicized political dispute in Newfoundland centering on the relations between the company and the government. Thus it could plausibly be argued that the price of the stock throughout this period reflected the adverse information. The problem of proof of damages is further complicated by the fact that on the first day of trading following full disclosure by the company on May 31, 1972—trading was suspended from early March, 1972 to August 11, 1972 as a result of the sale of the project to the government of Newfoundland—the price was actually higher than the price when suspension began. (" 87, Wolf Affidavit, *supra*)

With regard to recoverable damages for the later period, Wolf largely defers to the opinion of Dr. Murray. (" 89, 92, Wolf Affidavit, *supra*)

As stated above, Dr. Murray submitted an affidavit setting forth his views and also testified at the hearing. His credentials as an authority on the workings of the stock market are impeccable. His analysis is based on the proposition that distinction must be made between losses attributable to general market forces and trends and losses attributable to "unique characteristics of a particular company," and he assumes that "[i]f announcements and reports issued by the company had an effect on [Javelin's] price, that effect can be measured by the differential price behavior of the shares relative to . . . indexes of market price." (" 4 and 5, Murray Affidavit, October 7, 1975) In short, he attempts to factor out the amount of money lost by purchasers which is not attributable to general market trends.

To this end he plotted the rises and falls of Javelin's selling price during the class period and compared them to the averages of the same data of two comparable groups of stock, the S & P Low Priced Common Stock and the Value Line Industrial Stocks. He concluded that in gross "the price experience of [the company] differed in no material respects from the price behavior of representative stocks in its risk class." (" 12, Murray Affidavit, October 7, 1975)

However, he allowed the possibility that a certain number of investors may have been induced to buy at premium prices by relatively high prices or spurts in market activity with no opportunity to sell before a drop ensued. He described three periods of such "activity premiums," periods in which activity in this security greatly exceeded the norm, and calculated that a total of roughly 2,500,000 shares were traded for an aggregate premium, i. e., price in excess of normal—of \$6,013,750. From this sum, he deducted the amount which, by his estimate based on his study of the records of the transfer agent, represented money paid by short-term traders who were in and out of the stock before the price dropped, a group he believes to comprise more than 50% of the excess activity in these periods. (§ 16, Murray Affidavit, *supra*) His adjusted total, after all these calculations, is \$2,430,000., a sum which he believes "fully reflects the losses which might have been sustained by investors who were buying with reference to expected developments and not simply to make a quick turn on the market." (§ 17, Murray Affidavit, *supra*)

The position of counsel for the defense on this application is a simple one. They maintain confidence that they would prevail upon a full trial, but are desirous of settling to avoid the expense entailed in the conduct and preparation of a "long, difficult and complicated" trial. (Memorandum of Canadian Javelin, October 10, 1975 at p. 21) They maintain that in view of the limitations of plaintiffs' chances of success and probable maximum recovery, the settlement is more than fair.

III.

The Terms of the Proposed Settlement

The proposed stipulation of settlement defines the "entire class period" as the period from April 30, 1969 through October 24, 1973. This period is subdivided into a "first period," from April 30, 1969 through May 31, 1972, and a "second period," from June 1, 1972 through October 24, 1973. The first period encompasses the allegations centering on the development of the linerboard

project and the second relates to the later activities. The defendants are to pay \$1,350,000. into a settlement fund in such proportions as they agree among themselves. Any payment by the company may be either in warrants for its stock or in cash or a combination of the two; any payments by the individual defendants will be in cash. All class members who sustained a loss shall be entitled to a pro rata share of the settlement fund, with one-third of the fund allocable to the claims of class members who purchased during the first period and two-thirds to the claims of those who purchased in the second period. The weighted recovery reflects the proponents' assessment of the weight of the case with respect to each time frame. A "loss," for purposes of eligibility to participate in the fund, is defined as the difference between the purchase price of the shares and the greater of (i) the selling price of the shares or (ii) the closing price of the stock on the American Stock Exchange on August 10, 1972, the first day of trading after May 31, 1972, in the case of the first period, or on January 27, 1975, the first day trading was resumed on the American Stock Exchange after October 24, 1973, in the case of the second period. Profits earned from a sale of any stock which was purchased during the entire class period up to the date of mailing of the notice of the hearing are to be deducted from losses in computing the claim of each class member. In the event of approval counsel for the plaintiffs will apply to the court for a fee of \$260,000. plus expenses to be paid out of the fund.

Matters left open by the terms of the stipulation were finalized prior to the hearing: as between the three defendants, Canadian Javelin, by an action of the Board of Directors, has undertaken to pay the entire amount of the settlement fund in cash.

IV.

Objections

Of a class which numbers in the thousands only eleven individuals have voiced objections to the compromise. Three objectors, (the Lurie group or the Luries) have

launched a well organized and rather acrimonious assault on the proposal. It is with their contentions that this portion of the memorandum is primarily concerned. The other eight, raise an assortment of issues challenging the substantive fairness of the plan which are dealt with at the end of this section.

[1,2] The general principles which guide us in assessing the fairness, reasonableness and adequacy of a class action settlement are clear.

"[T]he role of a court in passing upon the propriety of the settlement of a class action is a delicate one . . . since "[t]he very purpose of a compromise is to avoid the trial of sharply disputed issues and to dispense with wasteful litigation, the court must not turn the settlement hearing 'into a trial or a rehearsal of the trial.'" Rather . . . it must reach 'an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated' and 'form an educated estimate of the complexity, expense, and likely duration of such litigation . . . and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.'" *Newman v. Stein*, 464 F.2d 689, 691-92 (2d Cir.) cert. denied, 409 U.S. 1039, 93 S.Ct. 521, 34 L.Ed.2d 488 (1972); (citations omitted).

At the heart of the analysis is an evaluation of the strength of the plaintiffs' case. *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974). This requires consideration both of the likelihood of establishing liability and the consequent probable reward in damages, balanced against the amount offered in settlement. *State of West Virginia v. Chas. Pfizer & Co.*, 314 F.Supp. 710, 740-41 (S.D.N.Y.1970), *aff'd*, 440 F.2d 1079 (2d Cir. 1971). Preliminarily, however, we must first consider a variety of procedural objections raised by the Lurie group, for considerations of the conduct of

the settlement proceedings are also relevant to a determination of the fairness of the plan. *Newman v. Stein*, *supra*, 464 F.2d at 692 and n. 8.

A. The Objections of the Luries

Faye Lurie and H. Haskell Lurie are the named plaintiffs in two similar actions, one in state and one in federal court, against these defendants in Chicago, Illinois.² Those actions allege very much the same wrongs as set forth in the complaint in this case and also purport to be class actions, although the proposed class periods are somewhat shorter. In neither has a class determination been made. Such a motion is currently pending, however, in the state case along with cross-motions for partial summary judgment.

Both of the Luries' cases were filed at approximately the same time as this one, in late 1973, so the Luries, too, have had an opportunity for fairly extensive discovery. Unlike the discovery by counsel for plaintiffs in this case, however, the Luries have been limited in their investigation of the merits of the case to examination of documents and answers to interrogatories. (§ 5, Plotkin Affidavit, September 25, 1975) Moreover, the Luries' lead counsel, Robert Plotkin, engaged in settlement discussions with defendants' counsel during the period of such discussions in this case.

1. Procedural Objections

The Luries contend that this settlement proposal is defective on account of several alleged procedural flaws in its development and presentation to the class. They claim that contrary to the Recommendations of § 1.46 of the Manual for Complex Litigation, a tentative class for settlement has, in effect, been created here; that the Notice of Class Determination, the Proposed Settlement and the Settlement Hearing (the Notice) was misleading in not explaining this fact and in misrepresenting the status

2. In fact, the Luries have opted out of this class, leaving their status as objectors somewhat open to question. Subsequent to the hearing counsel for Javelin filed a motion to strike their objection on this ground, but the

issue is rendered academic by the fact that the third objector in this group, Sally Einstein, is a class member and clearly has standing to complain of the proposed compromise. (See Einstein Affidavit, November 21, 1975).

of the Chicago litigation; and that the Notice imposed undue burdens on class members who desire to object to the settlement or to opt out. Finally, a persistent theme in the arguments of the Luries' attorney is that this settlement is the product of excessive bargaining leverage by the defendants, asserted by virtue of their ability to play the two attorneys, Plotkin and the class attorneys in this case, against one another and thereby obtain an unreasonably low settlement figure.

[3] We disagree that a tentative settlement class has been formed in this case. The motion for class determination was granted in February, 1975, fully five months before the settlement was presented to the court, and if the settlement were disapproved, the class determination would remain in effect. See generally, 1 Pt. 2 Moore's Federal Practice, Manual for Complex Litigation, § 1.46 at 54-57 (1975). It is true, however, that the motion was granted on consent of the defendants and subject to their right to raise objections at a later date. The order was thus conditional and subject to later revision, as it is expressly permitted to be by Rule 23(c)(1), and consequently there is arguably some similarity to the tentative class procedure criticized by the authors of the Manual. One of their concerns is the possibility that parallel settlement negotiations may be conducted with different purported class representatives. Apart from this problem, which we treat separately, the force of the Manual's critique of tentative classes has been considerably muted in this Circuit. In *City of Detroit v. Grinnell Corporation*, *supra*, 495 F.2d at 465-66, the Court indicated that the principal concern of this portion of the Manual is satisfied where, as here, the class members receive an opportunity to appear at a hearing and challenge any aspect of the proposed settlement.

[4] In light of the above, we disagree that the Notice was inadequate for failure to inform the class of the use of an allegedly tentative settlement class procedure. We also disagree that the Notice misrepres-

sented the Chicago litigation. The Notice stated:

"OTHER LITIGATION"

After this action was commenced, two stockholders started an action in the Federal District Court in Chicago (*Faye Lurie, et al. v. Canadian Javelin Limited, et al.*, 73 C 3086) based generally on the same issues as are involved in this action, which case has remained dormant, and another action in the Circuit Court of Cook County, Illinois (*Faye Lurie, et al. v. Canadian Javelin Limited, et al.*, 73 CH 7442) also based generally on the same issues as are involved in this case. In the latter action plaintiffs moved for a class action determination under Illinois Rules and for partial summary judgment and defendants cross-moved for complete summary judgment. The class action motion has been pending since July 12, 1974 and plaintiffs' partial summary judgment motion has been pending since December 24, 1974, both without determination."

Although the Luries object to the use of the word "dormant" to describe the federal case in Illinois, their papers make clear that the state case has been the focus of their attention to date. It is in the latter action that the class determination and summary judgment motions have been made, and apart from their disputed claim that the discovery which forms the basis for these motions applies as well to the federal case, the Luries point to no independent activity in that action. There is a sharp controversy in the affidavits before us on the existence of an agreement among counsel that discovery in either case may be used interchangeably in both, a controversy which we cannot and need not resolve on this record. Whatever the truth of the matter, the important fact is that the Notice revealed the existence of both cases and any concerned class member could have inquired further had he desired to do so. Even accepting the Luries' contention that they are proceeding with the intent fully to prosecute both actions, the description in the Notice may not fairly be characterized as a misrepresentation; at most it is an inaccuracy far less serious

than would be required to undermine a settlement.

[5] The Notice required that to object to the settlement, a class member must "file a notice of intention to appear and a statement of the basis for objection, together with a memorandum of supportive authorities," and that to opt out, a class member must, in addition to simply requesting exclusion, provide data as to his purchases and sales of the company's stock. The Luries contend that these requirements create unnecessary burdens which discourage class members from exercising their rights. We recognize that such requirements may discourage objections or opting out of the class—although this would be disadvantageous, not advantageous to remaining members. We cannot agree, however, if indeed the Luries seriously mean to suggest it, that the inclusion of such requirements should bar approval of the settlement if it is otherwise fair and reasonable.

During the period in which the parties to this action were engaged in the discussions which ultimately led to the proposal under consideration, Plotkin was also attempting to work out a compromise of the Luries' actions. He was unsuccessful and now hints darkly that this settlement, if not collusive, is the product of the opportunities for coercion which inhere in a situation in which more than one class action is brought against defendants on the same cause of action.

The circumstances in which the instant settlement proposal was developed, with both Wolf and Plotkin contemporaneously attempting to resolve their respective suits, resemble the situation criticized by the Third Circuit Court of Appeals in *Ace Heating & Plumbing Co. v. Crane Co.*, 453 F.2d 30 (1971), where in a single purported class suit and prior to the designation of a class representative, defense counsel engaged in discussions with two different attorneys who both aspired to represent the class. The court observed that:

"a person who unofficially represents the class during settlement negotiations may be under strong pressure to conform to

the defendants' wishes. This is so because such an individual, . . . knows that a negotiating defendant may not like his 'attitude' and may try to reach a settlement with another member of the class."

.

"The attorneys' fees and the prestige attendant upon probable appointment as class representative are the rewards for the attorney who bargains successfully with the defendants." *Ace Heating & Plumbing Co. v. Crane Co.*, 453 F.2d 30, 33 (3d Cir. 1971).

[6] The possibility that events transpired as Plotkin alleges is a troubling one, and it is the more so because, in contrast to the situation in *Ace Heating*, the possibility arises not out of premature settlement negotiations in a single class action, over which a court could exercise a considerable measure of control, but out of the pendency of more than one suit in two entirely different jurisdictions, a situation which seems largely beyond the power of a court to prevent. This is, however, simply one of a number of novel and knotty problems arising from the unique attorney and client relationship in class action litigation, where with much more frequency than in traditional litigation the interests of a class attorney may diverge from that of his clients. See, e. g., *Saylor v. Lindsley*, 456 F.2d 896, 900-01 (2d Cir. 1971). Moreover, it by no means follows from the fact of contemporaneous negotiations of the two cases that undue leverage was exercised by the defendants against either group. Perhaps as courts become increasingly sensitive to the myriad complexities of class litigation these problems will be earlier perceived and, to the extent possible, headed off in the process. Confronted with these contentions at this stage of the proceedings a court must assume the burden to insure that the interests of individual class members are protected and be "doubly careful" in assessing the merits of the plan; see *Ace Heating & Plumbing Co. v. Crane Co.*, *supra*, 453 F.2d at 33; and see *Saylor v. Lindsley*, *supra*, 456 F.2d at 900-01; but it would not be in the

interests of the class to disapprove a settlement merely because the possibility of abuse existed if the proposal itself is fair and reasonable. As explained below, our examination of the merits of this agreement leads us to conclude that it is fair and reasonable and, consequently, that it is not the product of untoward negotiating leverage.

2. Substantive Objections

The Luries vigorously contend that this settlement is grossly unfair to the class. The case is so strong on liability, they claim, that "it is difficult to conceive how the defendants could possibly win." (Lurie Memorandum, filed September 26, 1975 at 8) Damages are asserted to range from 30 to 50 million dollars.

That both contentions are substantially exaggerated is evidenced not only by the persuasive submissions of the proponents of the compromise, but by the disparity between the actions and bargaining positions of the Luries' attorney, Robert Plotkin, prior to the time this settlement was agreed upon and his subsequent claims. Indeed all the arguments so energetically advanced are considerably dimmed by the shadow of the fact that at the time he was negotiating for a settlement, Plotkin was discussing a figure of \$2 million as the basis for settlement of the Illinois class litigation. (Tr. 125; * 2(d), and Ex. 3-J, Plotkin Affidavit, *supra*) Assuming the accuracy of his statements about the likelihood of success, the figure suggests a much lower estimate of possible damages; on the other hand if his damage estimates are realistic, it suggests an evaluation of his chances of success considerably less sanguine than he now maintains. In fairness to Plotkin it does appear that this figure was always a tentative one. (Exs. 3-E, 3-J, Plotkin Affidavit, *supra*)

3. At the end of their post-hearing memorandum, the Luries provide a brief excerpt from Javelin's contract with the Panamanian government which tends to undermine the company's claim that its announcements regarding its right to exploit the Cerro Colorado copper were based on a good faith interpretation of the terms of the contract. (Post-Hearing Memo-

Nevertheless the vastness of the difference between it and the figures he now claims to be the likely range of recovery is exceedingly striking. Indeed, the inference is inescapable that his present contentions are heavily colored by the threat that the prospect of approval of this settlement proposal poses to the viability of the Lurie litigation insofar as the Luries hope to represent a large class of investors.

In support of the somewhat extraordinary assertion about the strength of their case the Luries have submitted almost nothing of probative value.³ Annexed to the pre-hearing papers were copies of the complaints in their two cases, a proposed amended complaint in the federal action, the SEC's complaint in a related case, and their proposed order granting them partial summary judgment as to liability in their state case. These conclusory and argumentative documents shed no light whatsoever on the question before the court.

It is true that the attorney who appeared for the Luries at the hearing, Aram Hartunian, was prepared to make "copious" reference to the record in the state case in Illinois, particularly to the motion for partial summary judgment, in speaking to the strength of the claims in that proceeding. (Tr. 65-68) We declined to permit this. To have done so would have required this court to consider the merits and review the record in the current Illinois litigation and invited dispute with the other parties as to the differences and similarities between the two cases. Moreover, the failure to include even a scrap of substantive documentary material going to the strength of the case in their hefty pre-hearing submission, which would have been the appropriate manner to present the argument to this court, created the distinct impression that their offer of proof was more in the nature of a dilatory

random, November 3, 1975 at 38-40) It is, of course, impossible to assess the significance of this single item, but even accepting it at face value, it is by no means inconsistent with the position of counsel for the plaintiff class which is that this is the strongest of the several allegations in the complaint. See p. 1377, *supra*.

tactic than a good faith effort to aid the court in its determination. If Plotkin is correct that all material in his Illinois motion is applicable here, the proper course would have been to submit such material in an affidavit in opposition to this settlement.

The Luries again urged us to consider the summary judgment papers from the other case in the very substantial post-hearing material which was primarily directed at the question of damages. Although we recognize that there is authority in precedent, as well as common sense, for the proposition that it may be useful in assessing the strength of a case for a court to examine the record in related proceedings, *State of West Virginia v. Chas. Pfizer & Co., supra*, 314 F.Supp. 710, 741 (S.D.N.Y.1970), *aff'd* 440 F.2d 1079 (2d Cir. 1971), we continue to believe that it is not warranted in the present circumstances. First there is a significant, though perhaps not dispositive distinction between the kind of record available to Judge Wyatt in the *Pfizer* case and that being offered here. Judge Wyatt had the entire record in two cases, both of which had proceeded to the appellate stage. Such material is far more reliable as an objective source of information than such adversary documents as the briefs and exhibits in support of a motion for summary judgment, which much more often than not prove only that triable issues exist—a proposition which we do not doubt here. Second, we have most carefully studied the material which these objectors have submitted in support of the other half of their claim—that damages in this case are from 30 to 50 million dollars—and have concluded, as discussed below, that the figures are excessive in the extreme. The experience leads us to view with considerable skepticism the Luries' claim that another voluminous round of papers, copies of a motion which has now been pending in another court for 17 months with no disposition, will demonstrate that the case against these defendants is air tight. Finally, and perhaps most important, even if we grant the objectors the benefit of the doubt and assume

that the case against these defendants is a good deal stronger than it appears from the submissions of the proponents (although we must discount as puffery their assertions of the inevitability of success), we find that the recoverable damages to the class are much closer to the \$2.5 million figure asserted by the proponents to be the maximum recovery than the \$30 to 50 million figure of the objectors.

As indicated above, the material submitted by the Luries in rebuttal of Dr. Murray's damages analysis and in support of their own much larger figure is extensive. It includes the results of a computer study which purports to measure total losses to the class based on four alternative models of stock holding period patterns, an affidavit by Dr. Andrew J. Senchack, Jr., Assistant Professor of Finance at the University of Texas, which criticizes the methods and conclusion of Dr. Murray, and a very substantial post-hearing memorandum. The thrust of all this is that damages to the class range from 30 to 50 million dollars and that a fair settlement would range from \$7½ to 10 million. The latter figure is derived by taking a "conservative" damage estimate of \$30 to 40 million, cutting it in half on the "generous" assumption that this many class members won't file claims, and then granting a 50% recovery to the class based on Plotkin's long-standing position that class members should ideally recover 50¢ on the dollar for their loss. (Post-Hearing Memorandum, November 3, 1975, p. 35) The logic of these calculations is nowhere explained.

[7,8] The fundamental defect of this approach is simply stated: The calculations are all designed to estimate *gross losses* to the class, that is the aggregate amount of money investors during the class period have lost, without regard to the causes of the loss. (Post-Hearing Memorandum, *supra*, at 7-8) This, however, is an entirely distinct question from that of recoverable damages. It is elemental that a plaintiff can recover only that part of a given loss which is attributable to the defendant's wrongful conduct.⁴ See *Cutner v. Ford*,

4. We reject the assumption implicit in the Luries' approach, finally made explicit in the Post-

Hearing Memorandum at page 8, note 1, that all (or gross) losses are recoverable damages in

373 F.Supp. 4, 12 (S.D.N.Y.1974). Application of this principle in market manipulation cases poses problems of extreme complexity, but this is no justification for dispensing with it altogether. Because their basic premise is in error, the Luries' computations, however accurate or interesting, are simply inapplicable to the question before us.

Although it is easy to point out the flaw in the figures submitted by the Luries, it is exceedingly difficult to determine the amount of damages the plaintiff class would recover should they prevail at trial.

[9] At the outset, the proper method of calculating damages in cases such as this is far from established. It is generally accepted that the theoretically preferred measure of damages in 10b-5 cases is the out-of-pocket rule applied in the common law tort action of deceit. *Harris v. American Investment Co.*, 523 F.2d 220, 224-25 (8th Cir. 1975) and cases cited there. Cf. *Tucker v. Andersen & Co.*, 67 F.R.D. 468, 482 (S.D.N.Y.1975). See generally, Note, Measure of Damages in Rule 10b-5 Cases Involving Actively Traded Securities, 26 Stan.L.Rev. 371, 383-85 (1974) [Hereinafter Note]. By this rule a plaintiff's damage is determined as of the date of the purchase by subtracting the actual value of the security from the purchase price. Any attempt to ascertain the actual value of a publicly-traded security at a prior purchase date necessarily entails such a large element of speculation, however, that some courts have suggested fixing the actual value at the price of the security at some post-transaction date when full disclosure has been achieved. *Harris v. American Investment Co.*, *supra*, 523 F.2d at 226-27; *Tucker v. Andersen & Co.*, *supra*, 67 F.R.D.

at 482; and see Note, *supra*, 26 Stan.L.Rev. at 374-77 and 383-85. While this course has the obvious attraction of providing a concrete figure for the true worth of a security absent the fraud, it completely disregards the many other factors which influence price fluctuation over time of stocks in general or of a particular stock. It therefore has the potential of creating a windfall recovery to a plaintiff in the nature of indemnification against the risks of the vicissitudes of the market, and at the same time saddling defendants with a cost far out of proportion to the damage caused by their fraud.

Where the suit is maintained as a class action the complexities of calculating damages increase geometrically. In contrast to the case of a single plaintiff, whose dates of purchase and period of holding the stock are readily available, the entire class of purchasers over a period of years encompasses literally thousands of purchase and sale dates, many of which have significance in ascertaining damage. Many class members may actually have made money on the fraud, by buying at a relatively low price and selling out near the peak; many may have broken even. Moreover, where damages are computed on the basis of the value of the stock at some post-transaction date of full disclosure, there is no way fairly to account for those who sold at a loss prior to that date, since the only non-speculative causes of their loss are market and other factors wholly independent of the fraud.

The myriad obstacles to a fair computation of damages are well-illustrated by the facts of this case. There is nothing in the record from any of the interested parties purporting to provide a reasoned basis for determining the actual value of Javelin stock at any time prior to the dates of full disclosure mandated by the SEC.⁵

this case. The suggestion that this conclusion is compelled by the opinion in *Chasins v. Smith, Barney & Co.*, 438 F.2d 1167 (2d Cir. 1970) is contradicted by the express distinction drawn there between the proper measure of damages where, as in that case, the issue was whether Chasins would have bought from the defendants at all if they had disclosed their interest in the stock, and a case such as this where the issue is whether the defendants ma-

nipulated the market and thereby secured an artificially high price for the stock. 438 F.2d at 1173.

5. Dr. Murray expressly disclaimed use of his testimony or affidavit to ascertain the "true value" of Javelin stock. It is his view that the concept has relevance only to companies whose shares are not actively traded. ("4.d and 7, Murray Affidavit, November 26, 1975) Dr. Senchack, the Luries' expert, also declined

Cite as 416 F.Supp. 1372 (1976)

If the alternative method suggested in *Harris v. American Investment Co.*, *supra*, is employed, the actual value would be determined as of the two dates on which trading resumed after full disclosure was achieved by SEC mandate, August 10, 1972 and January 27, 1975. Any attempt to figure damages on this basis, however, would have to take account of the fact that the period encompassed by this action, April, 1969 to October, 1973, was perhaps the most disastrous period in the post-1929 history of the stock market. See *Cutner v. Fried*, *supra*, 373 F.Supp. at 12; *Feit v. Leasco*, 332 F.Supp. 544, 586 (E.D.N.Y.1971). Furthermore, it would be necessary seriously to consider certain peculiarities of Javelin's situation which may well have accounted for a large decline in the price of its stock but might prove demonstrably separable from the alleged fraud. For instance, it is during the first class period, April 30, 1969 to May 31, 1972, that by far the largest amount of loss, calculated by the *Harris* method, occurred.⁶ It was during this period, however, that the company was experiencing its well-publicized difficulties with the Newfoundland government over the linerboard project. These facts suggest a strong probability that to whatever extent

the drop in the price of Javelin stock from 21½ in May 1969 to 7½ in March 1972 exceeded the drop in the stock market generally for comparable securities, it was attributable to the uncertainty over the future of the linerboard project created to a large extent by the political dispute in which the company had become entangled rather than to the fraud of the defendants.⁷ (See Letter to the Court of Benedict Wolf, June 14, 1976 at 4-5) Moreover, on August 10, 1972 the first day of trading after the full disclosure on May 31, the stock traded three points higher than when trading was suspended. This fact confounds the entire theory on which the *Harris* formulation is based.

[10] We are convinced of the practical impossibility of ascertaining the "true value" of Javelin stock on any given date during the class period so as to compute damages according to the theoretically ideal damage formulation. We also believe that the proponents of the settlement are correct in asserting that the *Harris* alternative, whatever its value in other situations, is of no use in reaching a fair damage figure on the facts of this case, at least not without substantial modifications to account for the many other variables affecting the price movement of the stock.⁸ Because of a ac-

to calculate "true value," stating that the task would only be possible upon an exhaustive analysis of the company's business, its books and its personnel. (" 18-22, Senchack Affidavit, November 1, 1975) The Luries' attorney makes the statement that the "true value" rarely exceeded \$3.00 per share during the class period, but offers nothing whatsoever to support that claim and, in fact, agrees that use of the usual out-of-pocket damage formula would "generally be unworkable" in cases such as this due to the difficulty of determining true value. (Note 1, Post-Hearing Memorandum, November 3, 1975 at pp. 8-9).

6. At the court's request counsel for the plaintiffs, for Javelin and for the Luries submitted estimates of damages in this case calculated according to the *Harris* alternative. Their figures are quite similar. The Luries assert that *Harris* damages are \$18 to \$22 million for the first class period and \$14 million for the second. Plaintiffs' counsel set the figures at \$25,855,755 and \$13,781,061 respectively, while counsel for Javelin estimate damages according to this formula at \$27,578,507 and \$13,785,776.

(Laycock Affidavit, June 8, 1976; letters to the court of Benedict Wolf and George Mickum III, June 14 and June 11, 1976)

7. A major element of the alleged fraud in this period is the non-disclosure of the problems with the government, which in any event was, according to the uncontradicted statements of the proponents, largely public knowledge. This was only one reason why the plaintiffs' attorneys determined that the allegations focusing on the first class period were by far the weaker part of the case. See 8, 10-11, *supra*. Such considerations, in addition to the general stock market decline during the class period, give serious cause to discount the significance of the very large damage figures produced by application of the *Harris* formula.
8. In connection with the submission of *Harris* damage figures referred to in note 6, counsel for the company submitted a modified estimate reflecting an attempt to factor out at least some of the variables, such as the effect of general market trends and the large number of short term buyers and sellers which must be discounted in arriving at a fair damage figure.

cept the proposition that other traditional damage formulations, such as loss of the bargain, and rescission, are entirely inapposite to cases such as this, see Note, *supra*, 26 Stan.L.Rev. at 374-77; 381-83, we are thus left to our own devices to fashion a fair damage approach.⁹

[11] We conclude that for purposes of determining the fairness of this settlement, the analysis of Dr. Murray provides a creditable basis for arriving at an estimated range of potential recovery. Although not without its theoretical difficulties, the approach avoids most of the pitfalls of the methods discussed above and appears successfully to derive a damage figure which distinguishes that considerable part of Javelin's price fluctuations attributable to general market forces from that which could arguably be caused by the alleged misrepresentations. Even allowing for the possibility that his method over-compensates for these external factors, if the recoverable damages were, say, twice what he claims, we think the settlement is well within the range of reasonableness. Viewed another way, the only statement about recoverable damages which can be made with anything approaching confidence at this point is that the figure is somewhere between Dr. Murray's figure of \$2.5 million and something less than the

Their adjusted estimates are \$9,946,000 for the first class period and \$2,937,000 for the second, or a total damage estimate of \$12,883,000. (Letter of George Mickum, *supra*, June 11, 1976) We think that the modifications applied by the company's counsel to the raw *Harris* figures were appropriately made, and agree further that even the adjusted figure of \$12,880,000 must be considered too large, as it takes no account of such factors as the very high turnover rate of Javelin stock, the thousands of different holding period patterns of the class members and the resultant variety of overall profits and losses sustained, and, most importantly, of factors peculiar to the company but independent of the alleged fraud, such as the dispute with the government of Newfoundland. (See Mickum letter, *supra*, at 6-9)

In addition, in view of the assertion of plaintiffs' counsel that the chances of establishing liability as to the first class period are remote, almost \$10,000,000 of the figure must be considered highly speculative.

\$12.8 million figure submitted by counsel for Javelin as partially adjusted *Harris* damages. See note 8, *supra*. Because we agree with proponents' counsel that even this figure fails to take account of significant factors which would further substantially reduce the recovery, see note 8, *supra*, we are prepared to believe that any ultimate figure derived from this formula would be significantly lower, and given the complexities and uncertainties which confront plaintiffs if this litigation is pursued, and the time and expense to all concerned which this would necessarily entail, we think that the settlement figure is a reasonable one.¹⁰ Cf. *City of Detroit v. Grinnell Corp.*, *supra*, 495 F.2d at 455 and n. 2.

B. The Other Objectors

[12] Apart from the Luries, eight class members—including two married couples—challenge the substantive fairness of the settlement on an assortment of grounds which can be dealt with rather briefly. Several mistakenly understood the plan to exclude from participation any purchaser during the class period who failed to sell his shares. However, anyone who bought during the class period and suffered a loss is entitled to share in the fund and the loss of non-sellers is measured by the price of the stock on the first day of trading after full disclosure. Two of these objectors com-

9. The extreme difficulty in reaching a fair damage figure were this case tried (and liability shown) is itself a factor which heavily commends settlement, *Newman v. Stein*, *supra*, 464 F.2d at 693, as is the prospect of having to determine damages on an individual basis if it were ultimately concluded that class calculation is simply impossible. *City of Detroit v. Grinnell Corp.*, *supra*, 495 F.2d at 467.

10. We see no inherent incompatibility between accepting Dr. Murray's conclusion as a reasonable estimate of damages and proceeding to distribute the settlement fund according to a formula which measures loss in a manner akin to that employed by the court in *Harris v. American Investment Co.*, *supra*, 523 F.2d 220. The former represents a sophisticated attempt to calculate damages with precision; the latter, a necessary rough accommodation to the practical realities of distributing the funds.

plained that the settlement did not provide for participation by those who bought Javelin stock prior to the class period and who continued to hold in reliance on the alleged misrepresentations. For better or worse, however, the federal securities laws preclude relief for holders in reliance and their exclusion from the class thus seems not only appropriate but mandatory. One objector expressed dissatisfaction with the possibility of being paid in warrants, but this is now moot in view of the company's decision to pay cash.

[13] Two objectors opposed the provision allowing the defendants to choose among themselves who will put up what portion of the fund. They argue that this allows the two individual defendants, who control the company's decisions and who are assertedly personally responsible for the alleged wrongdoing, to escape accountability while saddling the company with payment. Indeed, it has been decided that the company will do just that. Such a provision, however, is a matter for the defendants to agree upon or not. If they are prepared to do so, and thus assure that an amount which is a fair settlement will be available to the class, then the interests of the class will be protected. Cf. *Percodani v. Riker-Maxson Corp.*, 51 F.R.D. 473, 477 (S.D.N.Y. 1970). (We note that if the decision of the company to pay the entire amount is the result of improper machinations by the individual defendants, the wrong is redressable by a shareholder's action. The impropriety of this decision is cast in serious doubt, however, by the fact that both the individual defendants are indemnified against liability for acts within the scope of their duties, an indemnification which may well cover the wrongdoings alleged. (Tr. 29-30))

The remaining objections are more generally addressed to the fairness and adequacy of the settlement fund.

V.

Conclusion: The Settlement Should be Approved

The narrow question before us is whether this compromise is within the "zone of rea-

sonableness" in view of what we know about the merits of the case, the potential recovery and the consequent risks and complexities of proceeding on through trial. See *Newman v. Stein*, *supra*, 464 F.2d at 698. The plan appears to us to be within that zone. We credit the presentation of the proponents on the issue of liability, and although we believe there is a good possibility that a trier of fact might arrive at a higher figure of damages than Dr. Murray, we are confident that that figure would be significantly closer to his than to that of the Luries. Bearing in mind that "[t]he evaluation of a proposed settlement requires an amalgam of delicate balancing, gross approximations and rough justice," *City of Detroit v. Grinnell Corp.*, *supra*, 495 F.2d at 468, we find that this settlement merits approval.

Submit order.



SA17

NOTICE OF MOTION TO AMEND COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

GERTRUDE BONIME and LILLIAN CLDEN, :
 :
 Plaintiffs, : 73 Civ. 5117 (MEL)
 :
 -against- : NOTICE OF MOTION
 : TO AMEND COMPLAINT
 JOHN C. DOYLE, WILLIAM M. WISMER, :
 CANADIAN JAVELIN LIMITED, :
 Defendants. :
 :
 -----x

S I R S :

PLEASE TAKE NOTICE, that upon the affidavit of ROBERT M. KORNREICH, sworn to January 23, 1975, the proposed amended complaint, and upon the pleadings and all prior proceedings herein, the undersigned will move this Court (LASKER, J.) at the United States Courthouse, Foley Square, New York, New York, on ~~January 23~~, 1975, for an Order, pursuant to Rule 15(a) of the Federal Rules of Civil Procedure for leave to file an amended complaint in the form annexed hereto ("Exhibit A"), on the ground that such amendment is required in order that all issues between the parties may be fully litigated in this action.

Dated: New York, N.Y.
January 23, 1975

Yours, etc.

WOLF POPPER ROSS WOLF & JONES

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Attorneys for Defendants
John C. Doyle and William M. Wismer

AFFIDAVIT OF ROBERT M. KORNREICH SWORN TO JAN. 23, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		
GERTRUDE BONIME and LILLIAN OLDEN,	:	
	:	
Plaintiffs,	:	73 Civ. 5117 (MEL)
	:	
-against-	:	
	:	
JOHN C. DOYLE, WILLIAM M. WISMER,	:	
CANADIAN JAVELIN LIMITED,	:	<u>AFFIDAVIT</u>
	:	
Defendants.	:	
-----X		

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ROBERT M. KORNREICH, being duly sworn, deposes and
says:

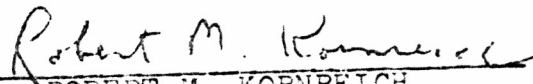
1. I am an attorney associated with the firm of
Wolf Popper Ross Wolf & Jones, attorneys for plaintiffs. I
submit this affidavit in support of plaintiffs' motion for
leave to amend the complaint pursuant to Rule 15(a) of the
Federal Rules of Civil Procedure.

2. The proposed amended complaint alleges in sub-
stance that the same acts and transactions complained of
herein have violated other provisions of the securities law,
namely Sections 17(a) and 5 of the Securities Act of 1933,
which violations were omitted in the present complaint. This
change to include additional violations of the securities laws
stemming from the same conduct cannot prejudice defendants and
should be granted in accordance with the liberal practice
allowing amended pleadings. The proposed amended complaint
also includes minor changes which follow from the Court's de-
cision and order dated December 11, 1974, granting a motion

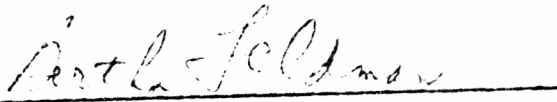
to add Lillian Olden as a party plaintiff and to amend the caption accordingly. A copy of the proposed amended complaint is annexed hereto as Exhibit "A".

3. At the present time, a motion for a class action determination is pending in this case. Since we believe that the proposed amendment simply adds additional common questions of law, we respectfully request that this motion for leave to amend be considered together with the class action motion so that all of plaintiffs' claims are before the Court in determining said class action motion.

For all of the foregoing reasons, we respectfully request that the instant motion for leave to amend the complaint be granted in all respects, and that service of an amended complaint in the form hereto annexed (Exhibit "A") be permitted.


ROBERT M. KORNREICH

Sworn to before me this
23rd day of January, 1975.



BERTHA FELDMAN
Notary Public, State of New York
No. 41-113777
Qualified in New York County
Commission expires March 30, 1975

AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----*

GERTRUDE J. BONINE and LILLIAN OLDEN, : 73 Civ. 5117 (MEL)

Plaintiffs:

-against- : AMENDED COMPLAINT

JOHN C. DOYLE, WILLIAM M. WISMER, :
CANADIAN JAVELIN LIMITED, :

Defendants.:

-----*

Plaintiffs, by their attorneys, Wolf Poppen Ross Wolf & Jones, respectfully allege upon information and belief, as follows:

1. This action arises under the Securities Exchange Act of 1934, as amended, 15 U.S.C. § 78a, et seq. (the "Exchange Act"), the Securities Act, 15 U.S.C. & 77a, et seq. (the "Securities Act") and the common law. Jurisdiction is conferred upon this Court by U.S.C.A. § 78aa and the principle of pendent jurisdiction.

CLASS ACTION ALLEGATIONS

2. (A) Plaintiffs bring the present action on behalf of the class hereinbelow described pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.

(B) The class consists of all persons who purchased the stock of Canadian Javelin Limited (the "Company") during the period in which the wrongs complained of were committed and continued.

(C) There are many thousands of persons who are members of the class located in various parts of the United States, and other countries. As a result, joinder of all class members is impracticable.

(D) Plaintiffs will fairly and adequately protect the interests of the class inasmuch as they are members of the class, and their claims are typical of the claims of all class members. Plaintiffs' interests are to obtain relief for themselves and the class for the violations of law set forth herein.

(E) The common questions of fact include the question whether there was a plan and scheme and course of conduct to deceive the investing public as to the financial condition and business operations and prospects of the Company; whether certain material facts about the Company's linerboard project activities in Newfoundland, and its mineral exploration and development activities in the Republic of Panama have been concealed from the public; whether the information disseminated to the public about the Company's activities in Newfoundland and Panama contained untrue statements of material facts and omitted to state material facts necessary to make the statements made therein not misleading; whether by disseminating such information or failing to disclose all material information, defendants manipulated and inflated the price of the Company's stock.

(F) The common questions of law include the question of whether the conduct alleged herein of defendants violated Section 10(b) of the ^{Exchange} Act and Rule 10b-5 promulgated thereunder, Sections 5 and 17(a) of the Securities Act, and principles of common law, and whether defendants are liable to plaintiffs and members of the class.

(G) The questions of fact and law that are common to the class predominate over questions affecting only individual members.

(H) A class action is superior to other available methods for the fair and efficient adjudication of the controversy:

(i) The frauds perpetrated by defendants were perpetrated on all members of the class, each of whose interest in prosecuting an individual action is minimal because the damage they have typically sustained is not large enough to make it economically feasible to institute an individual action. Unless this class action is maintainable, such individuals will not be able to obtain redress.

(ii) A multiplicity of suits in various jurisdictions by stockholders all over the United States with consequent burdens on the courts and the defendants and the danger to individual stockholders that the Statute of Limitations may run before they are, in fact, aware of their rights, should be avoided.

(iii) It would be virtually impossible for all said stockholders to intervene as parties-plaintiff in this action.

(iv) When the liability of the defendants have been adjudicated, claims of all members of the class (many of whom reside in New York and/or bought through New York brokers) can be filed in and determined by this Court.

(v) This Court is the most appropriate forum for litigating the claims made herein.

(vi) This class action will foster orderly and expeditious administration of the class claims; economies of time, effort and expense will be fostered and uniformity of decision will be ensured. This action presents an appropriate mechanism to prosecute the interests of all members of the class.

(vii) This action presents no difficulties which would impede its management by the Court as a class action.

THE PARTIES

3. Plaintiffs purchased common stock of the Company during the period in which the wrongful conduct complained of herein was committed and continued.

4. The Company is a foreign corporation organized and existing under the laws of Canada. It is primarily engaged, through its subsidiaries and affiliates, in the business of exploring and developing natural resources, particularly mineral ores. During the period 1968 - May 1972, it was also engaged in a project to build and develop facilities for the manufacture of linerboard in Newfoundland. As at December 31, 1972, it reported assets in excess of two hundred million dollars and had over six million common shares outstanding, as much as 75% of which shares were held by citizens of the United States. Its common stock has been listed and traded on the American Stock Exchange and is and was at all relevant times registered under and subject to the provisions of the Exchange Act. The Company's securities have never been registered pursuant to Section 5 of the Securities Act.

5. Defendant John C. Doyle is and was at all relevant times, a director and Chairman of the Executive Committee of the Company. During the period 1969 to date, he has owned and/or controlled approximately 20% of the Company's outstanding common stock.

6. Defendant William Wismer is and was at all relevant times, a director and President of the Company.

SUBSTANTIVE ALLEGATIONS

7. Commencing in early 1969, the defendants entered upon and have carried out a plan and scheme and course of conduct which was designed to and did deceive the investing public, including plaintiffs and other persons similarly situated as to the Company's true financial condition, and in particular its business operations and prospects. In furtherance of this plan and scheme and course

of conduct, defendants took the actions hereinafter set forth.

8. Commencing in 1969 and continuing to date, the defendants have caused the Company to issue and disseminate to the investing public, including plaintiffs, various releases and financial statements and reports, including Annual Reports, and to file various reports with the American Stock Exchange and the Securities Exchange Commission all of which contained untrue statements of material facts and omitted to state material facts necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading, concerning the Company's business activities in connection with a project to manufacture linerboard in Newfoundland, and in connection with a project to discover and exploit mineral resources in the Cerro Colorado area of the Republic of Panama.

9. During the period in question, said statements have indicated in substance and effect that linerboard production would commence in 1971, and that the linerboard mill complex at Stephenville, Newfoundland would be the largest and most up to date in the world. These statements were materially false and misleading in that they did not reveal the following:

- (1) The true size and anticipated profitability of the project or its commercial feasibility;
- (2) The true production quality and quantity of the project;
- (3) The true cost of the project or that said cost far exceeded cost projections;
- (4) The true extent of the financing needed to support the project, and the extent of financial support received or to be received from the Newfoundland Government and the disposition of such funds;
- (5) The serious disputes between the Company and

the Newfoundland Government concerning the project; and

(6) The serious obstacles encountered in obtaining necessary financing.

10. In or about May 1972, the Newfoundland Government agreed to purchase the linerboard project from the Company.

11. In or about April 1973, defendants publicly reported as a current asset of the Company, an item of approximately 4.1 million dollars which allegedly represented the amount due from the Newfoundland Government in connection with its takeover of the project from the Company. This was materially false and misleading in that it failed to reveal that the Government of Newfoundland had failed to acknowledge the said claim of the Company and that the Company had not taken the necessary steps to establish the claim such as instituting an arbitration proceeding. As a result, the Company's working capital was grossly inflated and the true amount thereof was approximately \$700,000 instead of \$5,000,000 as reported.

12. During the period in question, defendants have sought to and have conveyed to the public, the false and misleading impression that the Company:

(1) has a right to exploit an alleged large copper discovery in the Cerro Colorado area of Panama;

(2) has made commercial feasibility studies concerning this project; and

(3) has made financial arrangements to begin mining and production and has a favorable agreement to sell the entire initial output of such project.

13. Said impression was conveyed in particular by various press releases, statements and reports which defendants issued and publicly disseminated, and/or filed with the American Stock Exchange and Securities and Exchange Commission.

14. During the period in question, the Company has failed to publicly disclose that the right of the Company to exploit the ore in the Cerro Colorado area is highly speculative; that no final commercial feasibility study exists; that financial arrangements to begin mining and production do not exist; and that the Company is still negotiating to sell part or all of the output of the project and no sales agreement as yet exists.

15. By reason of all of the foregoing, defendants manipulated and artificially inflated the price of the common stock of the Company during the period 1969-1973.

16. Plaintiffs and other members of the class purchased common stock of the Company in reliance upon the aforesaid false and misleading statements which defendants had issued and/or prepared, approved and disseminated and in reliance upon the absence of public information disclosing the true financial condition and business operations and prospects of the Company, and the existence of a fair and honest market for the Company's common stock. If plaintiffs and others similarly situated had known the true facts concerning the Company, they would not have purchased said securities at the prices which they paid. At the time of the purchases by plaintiffs and others similarly situated, the fair market value of the Company's common stock was substantially less than the prices which they paid.

17. As a result of the foregoing, defendants directly and indirectly by the use of the mails and means and instrumentalities of transportation and communication in interstate commerce, have violated Section 10(b) of the Exchange Act, Rule 10b-5 promulgated thereunder and Section 17(a) of the Securities Act, in that they (a) employed devices, schemes and artifices to defraud, (b) made untrue statements of material facts or omitted to state material facts necessary in order to make statements made in light of the

circumstances under which they were made not misleading, or (c) engaged in acts, practices and a course of business which operated as a fraud or deceit upon plaintiffs and other similarly situated in connection with their purchases of the Company's stock, and in addition, they have violated Section 5 of the Securities Act.

18. By reason of the foregoing, the defendants have committed common law fraud upon plaintiffs and other members of the class similarly situated.

19. By reason of the wrongs described herein, the plaintiffs and all others similarly situated have been damaged as a result of their purchases of the Company's common stock.

20. Many of the acts and transactions hereinabove alleged occurred within the Southern District of New York.

WHEREFORE, plaintiffs pray for the following relief:

A. That plaintiffs and all other persons similarly situated have judgment against the defendants, in the amount of damages which they have sustained with interest thereon;

B. That plaintiffs be allowed the costs and expenses of this action including reasonable attorneys' and accountants' fees.

C. That plaintiffs have such other and further relief as to the Court may seem just and proper.

WOLF POPPER ROSS WOLF & JONES

By: _____
A Member of the Firm

Attorneys for the Plaintiffs
845 Third Avenue
New York, N.Y. 10022
(212) PLaza 9 - 4600

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LETTER DATED JUNE 14, 1976

LAW OFFICES

WOLF POPPER ROSS WOLF & JONES

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PLAZA 9-4600

June 14, 1976

Hon. Morris E. Lasker
United States District Court
for the Southern District of New York
United States Court House
New York, New York 10007

Re: Bonime, et al. v. Doyle, et al. (73 Civ. 5117)

Dear Judge Lasker:

We have made a tabulation of the trading in Canadian Javelin stock during the periods between April 30, 1969 and March 3, 1972, when trading was suspended, and between August 10, 1972, when trading was resumed, and October 24, 1973, when trading was again suspended, in response to Your Honor's request for a computation of damages to the class, calculated according to the method suggested by the Eighth Circuit in Harris v. American Investment Co., 523 F.2d 220. The details of the tabulation are attached as Exhibit A hereto.

During the period from April 30, 1969 to March 3, 1972, 7,636,700 shares of Canadian Javelin stock were purchased. Assuming that everyone who purchased stock during that period held his stock until August 10, 1972, the gross difference between the purchase price, based on monthly averages, and the closing price on August 10, 1972 (10-3/8) is \$25,855,755. (The assumption of all purchasers holding is of course an impossible one, since the total of shares purchased was almost double the amount of Canadian Javelin stock in the hands of the public, calculated by the SEC to be 4.3 million shares, and was more than the total of the company's outstanding stock.)

During the period from August 10, 1972 to October 24, 1973, 3,591,200 shares of Canadian Javelin stock were purchased. Assuming that all who purchased in that period held their stock until January 27, 1975, the difference between the purchase price, based on monthly averages, and the closing price on January 27, 1975 (7-1/8), when trading was resumed, is \$13,781,067.

These figures of \$25,855,755 and \$13,781,067 are no more than the result of a mechanical application of the method suggested (albeit tentatively) in the Harris case for computation

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June 14, 1976

of damages to the totally different situation existing in the instant case. They represent neither the losses sustained by those who purchased Canadian Javelin stock within the periods (losses, of course, being simply the difference between the purchase price and a lower sales price, regardless of cause), nor the damages suffered by such purchasers as a result of the misrepresentations of the defendants.

We have referred to the method suggested in the Harris case as tentative because even there, simple as the factual situation was, since it involved one transaction by one purchaser, the Court had difficulty with the question of damages, setting forth two alternatives: the difference between the price paid on purchase and the actual value at that time absent the misrepresentations (which alternative the plaintiff eschewed), and the difference between the price paid on purchase and the market price as of the date of public discovery of the fraud. While the Court gave Harris the right to use the latter alternative at trial, it recognized that he might not be able to "make out a case justifying this rule of damages," in which event he would have the opportunity to use the first alternative and attempt to prove that the actual value of the securities when he bought them was less than the market value he paid for them.

We respectfully submit that the principle for computing damages mentioned in the Harris case should not be applied in the instant case, and the gross figures set forth above, totaling \$39,636,822, are not really relevant to the ascertainment of loss to our class. To determine actual losses of those who purchased during either period, it would be necessary to trace each individual purchase to see whether the stock was held until August 10, 1972, in the one case, or until January 27, 1975, in the other, and, if not so held, when it was sold and at what price. If on such sale a loss was involved rather than a profit, it would be necessary to see if the same purchaser engaged in any other purchases and sales of Canadian Javelin stock, on which a profit was made, so that this profit could be offset against the loss. Whatever relevance the Harris rule of damages may have to those situations where purchasers hold their stock until public discovery of a fraud, its inapplicability to situations where many purchasers sold before the public discovery date is clear, as can be seen if we try to apply the Harris formula to three possible purchases of Canadian Javelin stock, of 100 shares each, on July 26, 1973, at \$14.00 a share (when the price was at this figure). If one of the purchasers sold his stock in September at \$18, and another did not sell before October 24, 1973 and had to hold until January 27, 1975 and the third sold his stock at \$14 the day after his purchase, the actual loss suffered by the three purchasers after deduction of profits would be about \$300. Yet, under the

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Harris rule of damages, the gross loss would be about \$2,100, seven times as great.

Not only is the Harris method irrelevant to a determination of losses but it is even less relevant to the establishment of damages, since the latter must involve not just the market price of Canadian Javelin stock when the misrepresentations became publicly known but an attempt to measure the effect of the misrepresentations during the first period on the market price of the stock when trading was resumed on August 10, 1972, more than 3 years after the misrepresentations began, and the effect of the misrepresentations during the second period on the market price of the stock when trading was resumed on January 27, 1975, more than 2-1/2 years after the misrepresentations began.

We have not attempted to estimate how much of the \$39,636,822 figure would have to be reduced to take account of profits made as well as of losses sustained by those who purchased and sold during the respective periods, rather than those who held to the end of the periods, nor have we attempted to estimate the effect on the overall figure by the elimination of the in-and-out trades, nor have we sought to analyze the effect of the insider trading during the periods, although the class definition specifically excludes directors, officers and employees of Canadian Javelin and their families, and persons who had access to non-public information (e.g., Noranda Mines, Ltd. and Anglo-American Corp., who bought substantial blocks of stock in the second period).

We have not made these estimates, although they would obviously reduce the gross figure by a huge amount, because it is our belief that the figure showing the difference between the purchase price of all purchases and the price on the resumption of trading dates has no relevance in the determination of damages in the instant case, because so many factors other than the misrepresentations affected the price of Canadian Javelin stock. (We note that in the Harris case the Court would not rule that the measure of damages was the difference between price paid and market price on the date of discovery of the fraud, saying that Harris would have to justify this rule of damages.)

Edward Brodsky, in the New York Law Journal article cited on page 6 of our Reply Memorandum (vol. 174, no. 5, September 3, 1975), said first that the practical problems in determining the value of a publicly traded security where materially false favorable information has been circulated "may be insurmountable" because "it is virtually impossible

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to isolate the inflated amount with any degree of accuracy." He then went on to say that using the market price on the date the fraud was publicly discovered as the basis for calculating damages [as in Harris] also creates problems, since in the intervening period a multitude of factors unrelated to the fraud probably affect the market, citing the general market movement as one such factor. He concluded that "it is illogical to isolate the fraud factor and assume that the only reason for a difference in market price after the discovery of the fraud is the fact of the discovery of the fraud."

In Harris, the Court recognized that there would be difficulty in applying as a rule of damages its formula of difference between purchase price and the price on the date of discovery of the fraud, although it permitted Harris to try to justify this damage rule. When we consider the facts in the instant case, we must conclude that what was recognized as difficult in Harris becomes practically impossible here. In addition to the factors that would affect the market price of stocks generally -- interest rates, balance of trade, the strength or weakness of the dollar, the rate of inflation, the rate of unemployment, economic forecasts, Presidential and Congressional policy, the world price of commodities (e.g., copper, particularly affecting Canadian Javelin) -- certain factors peculiar to Canadian Javelin would have to be weighed.

Thus, it would be necessary to try to evaluate the effect on the market price of Canadian Javelin stock of the hostile attitude and acts of the Conservative Government toward the company when the Conservatives ousted the Liberals from power. These were well publicized in the Canadian press and the financial pages of The Wall Street Journal and The New York Times. We must ask then how much of the drop in the price of Canadian Javelin stock, from 21-1/2 in May 1969 to 7-1/8 in March 1972, to the extent this went beyond the drop in the stock market generally, was due to the Conservative Government's publicly announced actions against the company. None of the drop could be ascribed to the public discovery of the fraud, as in Harris, since, first, the company did not issue its corrective statement until May 30, 1972 (and thereafter, when trading resumed, the price was about 3 points higher than when trading had been suspended); and, second, because, while the company itself may not have informed the investing public of what was happening on the Linerboard Project,

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all the facts were well covered by the press and thus available to the public.

In our Reply Memorandum, at page 7, we dealt with another problem in attempting to weigh the effect of Canadian Javelin's misrepresentations on the market price of its stock. In its December letter to stockholders (Plaintiffs' Exhibit No. 17 on deposition), the company said that, while it was of the view that it would receive a special exploitation contract, "[a]s in all contract negotiations, there is no certainty as to when or if any exploitation contract will, in fact, be awarded." In our Memorandum, we raised the question of what the effect on the market price would have been if the company had been as forthright as this in its July 1973 announcement of a major copper discovery. If the stock of the company had been traded when the corrective statement was finally made in December, taking this as the date of public discovery of the misrepresentations, would it have dropped from 15 (its price when trading was suspended) to 7-1/8 (its price on January 27, 1975)? How much of this drop was due to the fact that for more than fifteen months stockholders were unable to sell their stock, with the resultant selling pressure when trading reopened? How depressing an effect on the price of the stock was the very suspension of trading?

It was because so many factors in addition to the misrepresentations by Canadian Javelin affected the movement of its stock that we concluded that the only sound method of determining the impact of the misrepresentations on the price of the stock was to compare the market price of Canadian Javelin stock with the market prices of generally similar stocks in the corresponding periods and then isolate the deviations revealed by such comparison. We felt that this method, which was basic to Professor Murray's approach, made more sense than any alternative theory of damages and would give us a reasonably dependable estimate of damages as distinguished from losses, and, while we were not prepared to accept the precise parameters of extra volume trading used by Dr. Murray in his calculations, we felt, as I stated on page 4 of my affidavit of November 7, 1975, that even if we doubled his estimate of \$2,500,000 as damages, thus providing for a large margin of error, the proposed settlement was fair and reasonable and should be approved.

Respectfully yours,

Benedict Wolf
Benedict Wolf

BW:ap

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RECAPITULATION

	<u>Volume (in Shares)</u>	<u>Difference between Monthly Averages and \$10.375</u>
1969	2,366,800	\$14,806,081.2
1970	1,973,600	2,106,887.5
1971	2,743,800	9,547,112.3
1972 (1/1-5/31)	<u>552,500</u>	<u>(+) 604,325</u>
Total for First Period	7,636,700	\$25,855,755

	<u>Volume (in Shares)</u>	<u>Difference between Monthly Average and \$7.125</u>
1972 (6/1-12/31)	961,600	\$ 1,858,261
1973	<u>2,629,600</u>	<u>11,922,806.2</u>
Total for Second Period	3,591,200	\$13,781,067
Total for Both Periods	11,227,900 shares	\$39,636,822

SA35

1969

	<u>Volume (in Shares)</u>	<u>Monthly Average</u>	<u>Difference between Average and \$10.375</u>	<u>Difference x Volume</u>
May	375,200	19.25	8.875	\$ 6,875,900
June	427,600	18.6625	7.2875	3,887,175
July	228,300	14.875	4.5	1,019,600
August	166,100	14.875	4.5	750,450
September	123,500	14	3.625	447,687.5
October	289,500	14.6125	4.2375	1,284,656.2
November	186,600	13.6875	3.3125	619,112.5
December	167,500	13.375	3	506,500
Total	2,366,800			\$14,806,081.2

SA36

1970

	<u>Volume (in Shares)</u>	<u>Monthly Average</u>	<u>Difference between Average and \$10.375</u>	<u>Difference x Volume</u>
January	97,400	12.375	2	\$ 194,800
February	90,000	12.25	1.875	168,750
March	283,600	14.0625	3.6875	1,045,775
April	325,700	13.875	3.5	1,139,950
May	230,200	9.9375	+ 0.4375	+ 100,712.5
June	113,500	9.625	+ 0.75	+ 85,125
July	104,400	8	+ 2.375	+ 247,950
August	146,000	8.3125	+ 2.0625	+ 301,125
September	193,200	10.4375	0.0625	12,075
October	195,300	11.875	1.5	292,950
November	100,000	10.25	+ 0.125	+ 12,500
December	94,300	10.375	-0-	- -
Total	1,973,600			\$ 2,106,887.5

SA37

1971

	<u>Volume (in Shares)</u>	<u>Monthly Average</u>	<u>Difference between Average and \$16.375</u>	<u>Difference x Volume</u>
January	112,200	11.25	0.875	\$ 98,175
February	413,700	13.1875	2.8125	1,163,531.2
* March	416,100	16.5625	4.1875	2,574,618.7
April	530,700	15.375	5	2,652,500
May	145,700	14.6875	4.3125	628,331.25
June	188,600	14.75	4.375	825,125
July	180,300	15.0625	4.6875	845,156.25
August	177,900	13	2.625	466,987.5
September	92,600	12.8125	2.4375	225,712.5
October	144,000	11.5625	1.1875	171,000
November	185,800	10.125	+ 0.25	+ 46,450
December	156,200	10	+ 0.375	+ 58,575
Total	2,743,800			\$ 8,847,112.3

* Trading suspended from March 15 to April 4.

SA38

1972

	<u>Volume (in Shares)</u>	<u>Monthly Average</u>	<u>Difference between Average and \$10.375</u>	<u>Difference x Volume</u>
January	206,400	10.1875	+ 0.1875	+ \$ 38,700
February	159,800	9.75	+ 0.625	+ 99,875
* March	186,300	7.875	+ 2.5	+ 465,750
Total	552,000			+ \$ 604,325

* Trading halted March 7; resumed August 11.

	<u>Volume (in Shares)</u>	<u>Monthly Average</u>	<u>Difference between Average and \$7.125</u>	<u>Difference x Volume</u>
August	278,100	10.3125	3.1875	\$ 886,443.75
September	146,200	9.4375	2.3125	338,087.5
October	180,700	9.5625	2.4375	440,456.25
November	85,900	9.375	2.25	193,275
December	270,700	7.125	-0-	-0-
Total				\$ 1,858,261

SA39

1973

	<u>Volume (in Shares)</u>	<u>Monthly Average</u>	<u>Difference between Average and \$7.125</u>	<u>Difference x Volume</u>
January	157,200	7.1875	0.0625	\$ 9,825
February	89,000	7.625	0.5	44,500
March	123,100	8.625	1.5	184,650
April	80,500	8.125	1.0	80,500
May	145,600	7.4375	0.3125	45,500
June	84,300	7.625	0.5	42,150
July	709,400	10.75	3.625	2,571,575
August	384,000	12.8125	5.6875	2,184,000
September	673,300	14.9375	7.8125	5,260,156.2
October	183,200	15.3125	8.1875	1,499,950
Total	2,629,600			\$11,922,806.2

SA40
COURT'S EX. L-LETTER DATED 8/28/75

Skinner & Co.

110 SUTTER ST., SUITE 1003, SAN FRANCISCO, CA. 94104 / (415) 981-0970 / CABLE ADDRESS: WINNER, SAN FRANCISCO / TELEX: 278201

August 28, 1975

The Hon. Morris E. Lasker
Judge of the United States District Court
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

Re: Bonime v. Doyle, et al., 73 Civ 5117 (MEL)

Dear Judge Lasker:

Many of the purchasers of Canadian Javelin Limited stock will never know of their rights to file proofs of claim, because the company does not have their current addresses and they do not read the Wall Street Journal.

Our Shareholder Locator Service finds current addresses of shareholders for courts in class action cases. We charge \$7 per found current address (\$9 if the list is fewer than 100 names).

If you will have the returned envelopes from the notice mailing sent to us, we will find many of the shareholders who are to benefit from your decision.

Sincerely yours,



Carlton Skinner

CS:bb

Enclosure

cc: Wolf Popper Ross Wolf & Jones, Esqs.
Diamond & Golomb, P. C.
Moses Krislov, Esq.

SHAREHOLDER LOCATOR SERVICEof SKINNER & CO.

110 Sutter Street, Suite 1003, San Francisco, Ca. 94104

<u>CLIENT</u>	<u>TOTAL SEARCHED</u>	<u>RESULTS FOUND</u>	<u>PER CENT</u>
<u>CLASS ACTION MEMBERS:</u>			
Potential Members of class to participate in Settlement Fund			
On behalf of U. S. District Court, Southern District of New York			
For: U. S. Magistrate, Fisher v. Kletz (YALE EXPRESS SYSTEM, INC.)	1146	422	37%
For: Wiggin & Dana, New Haven, Connecticut (VALLEY METALLURGIC PROCESSING, INC.)	452	201	44%
For: Rabin & Silverman, New York, New York (PYRAMID COMMUNICATIONS, INC.)	109	56	51%
<u>SHAREHOLDER ADDRESS CHANGES:</u>			
Stockholders whose mail has been returned by the Post Office			
CALBIOCHEM	110	45	41%
<u>UNCLAIMED DIVIDEND LIST:</u>			
Stockholders with unclaimed dividends			
LARSON INDUSTRIES, INC.	395	197	50%
ATLAS HOTELS	99	47	47%
THE SIGNAL COMPANIES, INC.	954	375	39%
TRANSAMERICA INVESTMENT MANAGEMENT CO.	193	70	36%
<u>UNCLAIMED CUSTOMER ACCOUNTS:</u>			
Customers with securities, unpaid dividends, or cash in account			
DEAN WITTER & CO., INC.	134	97	72%
<u>UNCLAIMED ACCOUNTS AT SAVINGS & LOAN ASSOCIATIONS:</u>			
Owners of savings and interest in inactive accounts			
CITY SAVINGS ASSOCIATION	484	193	40%
CITIZENS SAVINGS & LOAN	259	83	32%
FIDELITY SAVINGS & LOAN	24	18	75%
STATE SAVINGS & LOAN	15	9	60%

As shown above, we are retained by the corporation, the court, the attorney, the savings and loan association, or the brokerage company. We do not make any charge to the shareholder or account holder. We are not an heir-finding company.

Jules C. Goldstone
213 South Barrington
Los Angeles, California 90049

September 11, 1975

The Honorable Morris E. Lasker
United States District Court
Southern District of New York
Room 618, United States Court House
Foley Square, New York, N.Y.

Re: Gertrude J. Bonime et al., PL.) 73 Civ. 5117 (MEL)
against)
John C. Doyle et al, Def.) Class Action

Dear Judge Lasker:

I trust the contents of this presentation will be given your consideration despite its informality.

I am a member of the class as defined in the Notice of Proposed Settlement in that I purchased common stock of Canadian Javelin on May 29, 1969 and on November 2, 1971. However, as I interpret said Notice of Proposed Settlement I am not entitled to share in said settlement because I have not as yet sold said stock and, therefore, (according to said notice) I have not as yet sustained a loss.

I urge you to disapprove the proposed settlement because it is unfair and unreasonable in that:

(1) It fails to take into consideration the situation of a class member who has not sold for the reason that at the time he desired to sell his stock the trading on the exchange was discontinued by order of SEC or the American Stock Exchange; and

(2) Since the defendants will be permitted to agree among themselves as to what proportion of the \$1,350,000 fund each will pay, a great inequity could occur if the misrepresentations (being the basis for the action) were substantially the work of the individual defendants and the payment were made entirely or substantially by defendant Canadian Javelin, thus resulting in an unfair and damaging dilution of the value per share of the Canadian Javelin stock.

SA43

The Honorable Morris E. Lasker
September 11, 1975

I would hope that in some fashion your reaction to this presentation would be communicated to me. I am sending copies as indicated below.

Most respectfully,

Jules C. Goldstone
Jules C. Goldstone

Copies to:

Wolf Popper Ross Wolf & Jones, Esqs.
Diamond & Golomb, P.C.
Moses Krislov, Esq.

BEST COPY AVAILABLE

SA44

COURT'S EX. 3-LETTER POSTMARKED SEPT. 3, 1975

20 E BRIAN DRIVE

STOUGHTON, 02072

MASS., 8/21/75

Honorable Morris E. Lasker
Judge of the United States District Court
the Southern District of New York
Room No. 618.
United States Courthouse,
Zuley Square,
New York, N. Y.

Dear Sir:

My son and I are the owners of 9,000
shares of Canadian Pacific stock, bought
before 1969.

These years are not included in the class
action which you are hearing on Oct 17th 1975.

We would have sold our business 1969 to 1975
if we had not been persuaded to hold, by
the statements of the defendants and therefore
we have been hurt as much as the other
plaintiffs that you are paying.

Can you help us deal

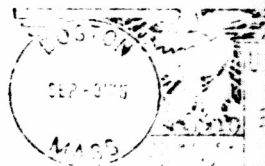
Yours Leonard

over

SA45

Can you see to it that money paid
out will come to we stockholders
who have been hurt; instead of to the company

M. LEONARD
20 E BRIAN DRIVE
STOUGHTON,
MASS. 02072



Honorable Morris E. Lasker
Judge of the U. S. District Court
The Southern District of New York
United States Courthouse,
Room 618
2oley Square,
New York, N. Y.

9/30

COURT'S EX. 5-LETTER DATED 9/26/75

BERNARD HANFT

COUNSELLOR AT LAW
6 CLINTON STREET
NEW YORK, N. Y. 10002

Anal 8-183

RE: BONIME et al v. DOYLE et al
73 CIV 5117 (MEL)

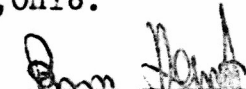
September 26, 1975

The undersigned hereby appears for ROSALINE H. HANFT
a member of the class, who objects to the settlement
on the following grounds (1) Not shown how the amount was
arrived at (2) Amount sued for not specified (3) Why the a-
mount accepted is deemed satisfactory is not clear (4)
It is not stated how much could have been sued for (5)
A related case in Boston is not taken into consideration.


BERNARD HANFT

BERNARD HANFT, being an attorney, affirms under
CPLR 2106: That on September 26, 1975, he mailed
a copy of the above to the following: Wolf, Popper,
Ross, Wolf & Jones, Esqs., 845 3rd Ave., NY, NY, Diamond
& Golomb, Esqs., 99 Park Ave., NY, NY and Moses Krislov,
Esq., 800 Engineers Building, Cleveland, Ohio.

Affirmed on 9/27/75


BERNARD HANFT

EX. 7 LETTER DATED 8-22-75

8/5

Blackwell Walker Gray Powers Flick & Hoehl
Attorneys at Law

T. J. BLACKWELL (1896-1964)

WILLIAM L. GRAY, JR.
 SAMUEL J. POWERS, JR.
 ROBERT G. YOUNG
 JOHN R. HOEHL
 WILLIS M. FLICK
 ROBERT ASTI
 W. F. MURPHY
 JOHN B. KELLEY
 HOWARD E. BARWICK
 PAUL R. LARKIN, JR.
 JACK LEE ORKIN
 JOHN RODGERS CAMP, JR.
 WILLIAM L. GRAY, III
 G. RUSSELL CROFTON
 JAMES E. TRIBBLE
 R. LAYTON MANK
 JOSEPH A. MORETZ

GENE ESSNER
 JOHN J. O'BRIEN
 JOHN H. GERKEN, III
 J. FROST WALKER, III
 MARTIN J. KURZER
 JOSEPH H. WALKER
 BETTY F. BRADBURY
 JOSEPH C. SIMS
 A. J. PERENO
 WILLIAM W. MITCHELL
 KENNETH L. OLSEN
 RODD R. BUELL
 CHARLES E. SAMMONS
 MORRIS F. KLEIN
 ROGER L. BLACKBURN
 EDWARD R. NICKLAUS
 MARK M. CARROLL

WILLIAM J. VOSPER
 MARK HICKS
 HARRY STEINBERG
 JAMES D. ADAMS
 WALTER W. MANLEY, II
 FRANCIS A. ANANIA
 ALICE W. WEINSTEIN
 GLEN E. SMITH
 ROBERT J. ASTI
 J. MICHAEL NIFONG

OF COUNSEL
 WILLIAM H. WALKER, JR.
 ALFRED M. FRANKLIN

2400 First Federal Building
One Southwest Third Avenue
Miami, Florida 33131

(305) 358-8800
 CABLE "BLACKWALK"

PERSONAL

August 22, 1975

Honorable Morris E. Lasker
 Judge of United States District Court
 Southern District of New York
 Room 618, United States Courthouse
 Foley Square
 New York, New York

Re: Bonime et al, vs. Doyle et al, 73 Civ 5117 (MEL)

Dear Judge Lasker:

I am writing this letter on behalf of my wife, Dorothy F. Klein, owner of 400 shares of Canadian Javelin stock bought during the first class period, and myself, owner of 100 shares of such stock purchased during the same period. We have each received a Notice of a Class Action Determination, of a Proposed Class Action Settlement and Hearing Thereon, and Requirements for Filing Proofs of Claim in the subject action. We are each members of the class described in said Notice but we are apparently not entitled to share in the proposed settlement because claims are limited to "every class member who has sustained a loss from the sale of Javelin stock." We have sustained a loss from the purchase of Javelin stock but have not sold our shares. The effect of the proposed settlement is to wipe out the claims of present stockholders who, like us, do not have a sufficiently large claim to justify initiating an individual suit for relief.

The losses of all members of the class were sustained at the time of purchase and not at the time of sale and can be determined by the difference between the actual value of the stock at the time of purchase and the price paid therefor. The actual value of the stock at that time is the price it would have sold for if the alleged false representations of the defendants had not been made.

Honorable Morris E. Lasker
August 22, 1975

The expense involved, in a trip from Miami to New York for the purpose of a personal appearance to object to the proposed settlement or in retaining an attorney to appear in our behalf for that purpose, would be too great to justify in light of the small amount of possible recovery. Under the circumstances, fairness dictates that we should be given the opportunity to present to the Court in writing our objections to the proposed settlement.

In view of the foregoing, we request your permission to file written objections to the proposed settlement as unfair, unreasonable and inadequate without any appearance in person or by counsel.

We regret the necessity of burdening Your Honor with this request but, in view of the contents of the Notice, see no other way of obtaining justice for ourselves. We sincerely appreciate your kind consideration.

Respectfully Yours,



Morris F. Klein

cc: Wolf Popper Ross Wolf & Jones, Esqs.
Diamond & Golomb, P.C.
Moses Krislov, Esq.

Blackwell Walker Gray Powers Flick & Hoehl

SA49

LETTER DATED DEC. 30, 1975

LAW OFFICES

WOLF POPPER ROSS WOLF & JONES

845 THIRD AVENUE

NEW YORK, N. Y. 10022

PLAZA 9-4600

CABLE "WOPOROW" NEW YORK

December 30, 1975

Diamond & Golomb, P.C.
99 Park Avenue
New York, New York 10016

Re: Bonime v. Doyle

Gentlemen:

We transmit herewith the Proof of Claim of
Gertrude J. Bonime duly signed and notarized.

Very truly yours,

WOLF POPPER ROSS WOLF & JONES

By: Robert M. Kornreich
Robert M. Kornreich

RMK:mlj
Enc.

SA50

Record Sheet for Rejection
Of Bonime Action Claim

Claimant:

Bonime (Wolf's plaintiff)

Shares:

400

Basis of rejection:

1. _____

2. _____

3. _____

(Send claimant copy of proof form.)

4. _____

5. _____

6. _____

7. _____

(Send claimant _____)

Approved: _____

(Initials of Attorneys)

Letter form filled
out as above & enveloped: _____

(Initials)

NOTE: Letter forms must be mailed and postmarked on February 5, 1976. This sheet must be attached to each claim and filed with it.

*Note: To be reviewed by Irving.
appears OK to me. STS.*

SA51

VERIFIED PROOF OF CLAIM AND RELEASE

Pursuant to court order, in order to receive any payments in the below litigation, you must file this Proof of Claim on or before January 16, 1976. If you fail to file by that date, your claim will be subject to rejection and you may be precluded from receiving any money in the settlement of this class action.

Mail your claim promptly to:

Clerk of the United States District
Court, Southern District of New York
(Re: Bonime v. Doyle, et al., 73 Civ.
5117 (MEL))
United States Courthouse
Foley Square
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BONIME and
LILLIAN OLDEN,

Plaintiffs,

— against —

JOHN C. DOYLE, WILLIAM M. WISMER,
and CANADIAN JAVELIN LIMITED,

Defendants.

73 Civ. 5117 (MEL)

CLASS ACTION

GERTRUDE J. BONIME being duly sworn, deposes and says:
(Insert Name)

- L. **IDENTITY OF CLAIMANT:** (Fill in appropriate space in only one of the following paragraphs, either A, B, C, D, or E).

SA52

A. INDIVIDUAL OR JOINT OWNERSHIP:

My (our) name(s) is (are) GERTRUDE J. BONIME

and my (ours) address is 580 Flatbush Avenue, Brooklyn, New York 11225

B. CORPORATION:

I am the of
Title

NAME OF CORPORATION

I am authorized to make this claim on behalf of the corporation.

C. PARTNERSHIP:

I am a member of

a co-partnership; our business address is

I am authorized to make this claim on behalf of the partnership.

D. EXECUTORS OR ADMINISTRATORS:

I am (we are)

the executor(s) administrator(s) of the Estate of

....., deceased, and my (our) mailing
address is

E. OTHERS:

(Give full particulars: name, address, on whose behalf you are acting, capacity etc.).

II. PURCHASES OF CANADIAN JAVELIN LIMITED COMMON STOCK BETWEEN APRIL 30, 1969 AND OCTOBER 24, 1975, INCLUSIVE

A. With Respect To Each Purchase, State In Chronological Order In The Schedule Below:

1. Date(s) of Purchase	2. No. of Shs. Purchased	3. Purchase Price Per Share	4. Tot. price pd. excluding commission	5. If sold, date(s) of sale	6. No. of Shares Sold	7. Selling Price per Share	8. Net Sale Price excluding commission	9. Profit or Loss (dif. bet. Column 4 & 8)
---------------------------	--------------------------------	-----------------------------------	--	-----------------------------------	--------------------------	----------------------------------	---	---

COMMON BACK

5/27/70	400	8-3/8	\$3,350.00
---------	-----	-------	------------

WE CONFIRM THE FOLLOWING TRANSACTION
SUBJECT TO THE TERMS AND CONDITIONS SET
OUT ON THE REVERSE SIDE HEREOF

BRUNS, NORDEMAN & CO.

MEMBERS NEW YORK STOCK EXCHANGE

IMPORTANT

TO ASSURE IMMEDIATE CREDIT TO
YOUR ACCOUNT, PLEASE RETURN
THE DUPLICATE COPY WITH ANY
PAYMENT OF CASH OR DELIVERY
OF SECURITIES

115 BROADWAY, NEW YORK, N. Y. 10006 • TEL. (212) 349-0600

YOU BOUGHT
300

YOU SOLD

CANADIAN JAVELIN LTD

PRICE
8 3/8

TRADE DATE
05-27-70

SETTLEMENT DATE
06-03-70

2,512.50		46.14	15.00		2,573.64
PRINCIPAL	STATE TAX OR INTEREST	COMMISSION	SERVICE OR CERT. CHGE	SEC. FEE	NET AMOUNT

2	045839	1	36	2
YOUR ACCOUNT NO			CA. ♦	

MRS GERTRUDE J BONIME
500 FLATBUSH AVE
BROOKLYN N Y 11225

TYPE OF ACCOUNT
1 CASH
2 MARGIN
3 SHORT
4 NON PURPOSE LOAN
5 SPECIAL SUBSCRIPTION
6 SPECIAL CASH
7 MISC

SALESMAN

On order than read this carefully (100 shares) as it contains an amount that has been added to the price as purchase or deducted as sales. On the New York Stock Exchange the amount is 7 1/2 per share for stocks selling at \$10 or above, and 1 1/2 per share for stocks selling below. In all other cases an explanation will be provided on request.

WE CONFIRM THE FOLLOWING TRANSACTION
SUBJECT TO THE TERMS AND CONDITIONS SET
OUT ON THE REVERSE SIDE HEREOF

BRUNS, NORDEMAN & CO.

MEMBERS NEW YORK STOCK EXCHANGE

IMPORTANT

TO ASSURE IMMEDIATE CREDIT TO
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OF SECURITIES

115 BROADWAY, NEW YORK, N. Y. 10006 • TEL. (212) 349-0600

YOU BOUGHT
100

YOU SOLD

CANADIAN JAVELIN LTD

PRICE
8 3/8

TRADE DATE
05-27-70

SETTLEMENT DATE
06-03-70

837.50		15.30			852.80
PRINCIPAL	STATE TAX OR INTEREST	COMMISSION	SERVICE OR CERT. CHGE	SEC. FEE	NET AMOUNT

2	045839	1	36	2
YOUR ACCOUNT NO			CA. ♦	

MRS GERTRUDE J BONIME
500 FLATBUSH AVE
BROOKLYN N Y 11225

TYPE OF ACCOUNT
1 CASH
2 MARGIN
3 SHORT
4 NON PURPOSE LOAN
5 SPECIAL SUBSCRIPTION
6 SPECIAL CASH
7 MISC

SALESMAN

On order than read this carefully (100 shares) as it contains an amount that has been added to the price as purchase or deducted as sales. On the New York Stock Exchange the amount is 7 1/2 per share for stocks selling at \$10 or above, and 1 1/2 per share for stocks selling below. In all other cases an explanation will be provided on request.

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I am enclosing to the extent available the original or facsimile of the broker's confirmations, monthly accounts or other documents evidencing my status and in support of my claim. (If any such documents are not in your possession, please indicate below the name and address where such documents can be obtained).

III. SUBMISSION TO JURISDICTION OF COURT AND RELEASE OF DEFENDANTS

Claimant submits this Proof of Claim under the terms of the Stipulation of Settlement dated July 9, 1975, and claimant submits to the jurisdiction of the United States District Court for the Southern District of New York with respect to his claim and agrees to be bound by and subject to the terms of any judgment that shall be entered upon the Stipulation of Settlement. Claimant understands that the information contained in this Proof of Claim may be subject to further investigation and discovery under the Federal Rules of Civil Procedure and claimant agrees to furnish additional information to support this claim if required to do so.

In consideration of participating in the settlement claimant does by these presents for himself, his heirs, executors, administrators, successors and assigns, remise, release and forever discharge defendant Canadian Javelin Limited and its past and present officers, directors, employees, agents, attorneys, subsidiaries and affiliates and defendants John C. Doyle and William M. Wismer, and their heirs, representatives, agents, attorneys and successors, from all claims which have been asserted in the action, and all claims and causes of action which might have been asserted in connection with, or which arise out of, any of the matters alleged in the action, whether known or unknown.

Signed by

Gertrude J. Bonine

STATE OF *NEW YORK*
COUNTY OF *KINGS*

} : ss.

On this *29* day of *DEC*, 1975, before me personally appeared

GERTRUDE J. BONINE

known to me to be the person who executed the within instrument and subscribed to and swore to the truth of said instrument before me and acknowledged to me that (s)he executed the same.

George H. Hayes

NOTARY PUBLIC

GEORGE H. HAYES
Notary Public, State of New York
No. 152702
Qualified in Kings County
Commission Expires March 30, 1976

EXHIBIT-COMPLAINT

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

73 NOV. 15 1973
JUDGE

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

v.

CANADIAN JAVELIN LIMITED
JOHN C. DOYLE
WILLIAM M. WISMER

Defendants.

COMPLAINT FOR A
PRELIMINARY AND
PERMANENT INJUNCTION,
APPOINTMENT OF A
SPECIAL RECEIVER,
AND OTHER ANCILLARY
RELIEF

NOV 23 3 21 PM '73

The plaintiff SECURITIES AND EXCHANGE COMMISSION ("COMMISSION"), based on information and belief, alleges that:

1. Defendants CANADIAN JAVELIN LIMITED, JOHN C. DOYLE and WILLIAM M. WISMER have engaged, are now engaged and are about to engage in acts and practices which constitute and will constitute violations of Sections 5 and 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. 77e and 77q(a), Sections 10(b) and 13(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78j(b) and 78m(a), and Rules 10b-5, 12b-20, 13a-1 and 13a-13, 17 CFR 240.10b-5, 17 CFR 240.12b-20, 17 CFR 240.13a-1 and 17 CFR 240.13a-13, promulgated thereunder.

2. Pursuant to the authority granted to it by Sections 10(b), 13(a) and Section 23(a) of the Exchange Act, 15 U.S.C. 78j(b), 15 U.S.C. 78m(a), and 15 U.S.C. 78w(a) respectively, the Commission has promulgated the rules enumerated in paragraph one and incorporated herein by

reference, and said rules were in effect at all times mentioned herein

now in effect.

JURISDICTION AND VENUE

3. The Commission brings this action pursuant to Section 20(b) of the Securities Act, 15 U.S.C. 77t(b), and Section 21 of the Exchange Act, 15 U.S.C. 78u, to enjoin such acts and practices.

4. This Court has jurisdiction of this action pursuant to Section 22(a) of the Securities Act, 15 U.S.C. 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. 78aa.

5. Certain of the acts, practices, courses of business and transactions constituting violations of the Securities Act and the Exchange Act have occurred within the Southern District of New York. Such activities were effected by making use of the means and instrumentalities of interstate transportation and commerce and of the mails.

THE DEFENDANTS

6. CANADIAN JAVELIN LIMITED ("CJV") is a Canadian corporation with its executive offices located in Montreal, Canada. Through its subsidiaries and affiliates it is engaged primarily in the business of locating and developing mineral and other natural resources. Although CJV's primary source of revenue is derived from iron ore royalties, its current focus of attention is on a copper prospect in Panama. It has other mineral interests in Ethiopia, Mexico, El Salvadore, Chile and Newfoundland. The company reports assets of approximately \$79 million as of June 30, 1973 and has approximately 6.5 million shares of common stock outstanding. It is believed that at least 75% of the public float of CJV's shares are owned by United States residents. The stock is listed for trading on the American, Montreal and Vancouver Stock Exchanges and is registered pursuant to Section 12(b) of the Exchange Act, 15 U.S.C. 781(b). There has never been an effective registration statement pursuant to the Securities Act with respect to any shares of CJV. The company reported 12,718 shareholders of record as of December 30, 1972. On September 25, 1958 the United States District Court for the Southern District of New York issued a final judgment permanently enjoining CJV, certain of its

others including DOYLE and others, from violating the registration provisions of the Securities Act and the anti-fraud provisions of the Securities Act and the Exchange Act. That action stemmed from Commission charge that sales of unregistered CJV stock were being made in the United States through telephone calls from "boiler rooms" in Montreal. In that action false representations were made concerning the size of the iron-ore reserves at its Labrador project and the representations were accompanied by predictions that the stock would quickly rise in value. The claims failed to disclose that large sums of money would be needed to develop the ore reserves and that CJV did not have the financial resources to develop them. The company consented to the injunction, without admitting the charges, and agreed to obey the United States securities laws and to list its common stock on the American Stock Exchange (AMEX). Since that date trading in CJV's common stock has been suspended numerous times for the reasons set out in subsequent paragraphs.

7. JOHN C. DOYLE ("DOYLE"), CJV's founder, is a director and chairman of its Executive Committee. He owns 20% of its outstanding stock, and as CJV's chief executive officer, dominates its policies. DOYLE was enjoined from further securities violations by the United States District Court for the Southern District of New York in 1958. On February 5, 1965 Doyle pleaded guilty in the United States District Court for Connecticut to violations of the registration provisions of the Securities Act in connection with those sales of CJV stock. He was sentenced to serve three years in prison, 33 months of which were suspended. He refused to surrender himself to United States officials and jumped bail. Presently he is a fugitive from justice. DOYLE presently maintains residences in Panama City, Panama, and Montreal, Canada.

8. WILLIAM M. WISMER ("WISMER") is president of CJV. A lawyer and Queens Counsel, he has been with CJV since 1967. He also has been vice-president and a director of Draper, Dobie & Company Limited in Toronto, a broker-dealer in securities. He has been vice-president

of the Toronto Stock Exchange, general counsel and secretary to the Broker Dealers Association of Ontario and on the legal staff of the Ontario Securities Commission. WISMER, a Canadian citizen, currently resides in Montreal.

SIGNIFICANT BACKGROUND INFORMATION

THE PANAMA PROJECT

9. On or before 1969 CJV and its subsidiaries began touting CJV's mineral concession in Panama. The basic facts appear to indicate that CJV through its subsidiaries have located large low grade copper mineralization in the Cerro Colorado area of Panama. Since that time numerous statements have appeared concerning CJV's ability to develop and exploit this prospect. As more specifically alleged in subsequent paragraphs, great doubts exist concerning material facets of that project. The defendants have made so many materially false and misleading statements concerning the project that at the present time it is impossible to ascertain true state of affairs. There has been little if any meaningful disclosure concerning: CJV's present right to exploit the project; the commercial feasibility of the project; the amount and availability of the requisite financing to engage in meaningful construction of production facilities; and the timing of the future development of the project.

10. During this same period, however, trading in the common stock of CJV has been materially affected by the defendants' false and misleading statements. Since January 1, 1970, the AMEX has halted or delayed trading in CJV stock on at least 5 different occasions because of the lack of information concerning the Cerro Colorado project. These halts by the AMEX have generally been preceded by a large volume of trading in CJV shares with attendant price fluctuations. In almost every instance trading was set off by false and misleading statements of the defendants.

SA60

11. The Commission suspended trading in CJV's common stock from the period of March 15, 1971 until August 9, 1971 because of lack of adequate information concerning the Cerro Colorado project. This same pattern emerged again in June 1973. Trading in CJV's stock was halted by the AMEX because of statements attributed to a Panamanian official concerning CJV's lack of a legal right to exploit its concession. The defendants since mid-June have made and caused to be made numerous false and misleading statements. This release of these statements was accompanied by an increase in the volume and price of CJV's stock. For example, during the first six months of 1973 the price of CJV's shares fluctuated from a low of approximately $5 \frac{7}{8}$ to a high of approximately $9 \frac{1}{2}$. On Friday, July 6, 1973, the shares closed at $7 \frac{1}{4}$.

12. During the week ending July 13, 1973 trading in the shares was very active and closed at $9 \frac{7}{8}$, a gain over the previous week of $2 \frac{1}{2}$. During the following two weeks active trading pushed the price up an additional $3 \frac{1}{2}$ points, closing on Friday, July 27, 1973, at $13 \frac{3}{8}$. The false and misleading press releases of July 5 and July 17, 1973 described in paragraphs 23 and 24 below were issued by the company during that price rise.

13. During August 1973 the stock did not vary greatly in price, closing on Friday, August 31, 1973 at 13. During the following two week period in which the August 31, 1973 and the September 6, 1973 press releases described in paragraphs 25 and 26 below were issued, the stock was extremely active and rose five points, closing on Friday, September 14, 1973, at 18. During the following two weeks, the shares were again heavily traded and closed on Friday, September 28, 1973, at $15 \frac{3}{4}$.

14. During the nine month period ending September 30, 1973 approximately 2,400,000 CJV shares were traded on the Amex at prices ranging from $5 \frac{7}{8}$ to 18. Of this total approximately 1,800,000 shares (or 75%)

SA61

was traded during the 3 months ending September 30, 1973 during which period most of the false and misleading statements were made or caused to be made by the defendants.

15. On October 20, 1973, the AMEX again halted trading of CJV's stock because of allegations that CJV had falsely claimed in a July 5, 1973 press release that a CJV subsidiary had been granted certain mineral concessions that in fact had not been granted. That halt in trading still exists.

THE LINERBOARD PROJECT

16. On Christmas Day 1968, the Newfoundland Government announced that it had approved an expanded CJV project to produce linerboard in Stephenville, Newfoundland. The total predicted cost of the project was some \$150 million, with \$53 million of that amount to be guaranteed by the government. From that date until early January 1972, the defendants made many false and misleading statements concerning the size and profitability of that project, the financing necessary to bring it into production and the problems associated with the commencement of that production, all as more fully set forth below.

17. For example, CJV's annual reports to shareholders for the years 1968 through and including 1970 extolled the virtues of the Newfoundland project. The 1968 report characteristically claimed that production would begin in 1971. The 1969 annual report indicated that CJV in the future was going to produce direct income from its resources rather than be dependent on income from royalties. The linerboard plant was to implement that new policy. The linerboard plant was to be one of the world's largest and one of the most up-to-date. Again, in the 1970 annual report the defendants pompously promoted the project before the public. No serious problems were mentioned.

18. During 1971, CJV still did not indicate in its public filings or otherwise that it was experiencing material difficulties with the linerboard project. Serious problems were encountered in obtaining the necessary financing and keeping within the cost projections.

19. In early 1972, the Newfoundland Government announced its intentions to take over the project. The Commission again suspended trading in CJV stock from the period March 4, 1972 until August 1972 because of the lack of information concerning this takeover and the reasons therefor. On May 1, 1972 CJV and the Newfoundland Government agreed the government would purchase the project from CJV. Later in May, CJV mailed to its shareholders a statement setting forth CJV's views of the takeover. In that document, many of the previously existing problems were revealed for the first time to the shareholders and the public. This document, utilized by the protean defendants to justify their new position vis-a-vis the project, makes it clear that CJV's prior optimistic disclosures concerning the project were inaccurate and misleading. No explanation was given why such material factors had not previously been disclosed.

COUNT I

Section 10(b) of the Exchange
Act and Rule 10b-5 Thereunder

20. The allegations in paragraphs 1 through 19 of this complaint are realleged and incorporated herein by this reference.

21. Commencing on or about November 1969, and prior thereto and continuing to the date hereof, in the Southern District of New York and other parts of the United States, the defendants CJV, DOYLE and WISMER and other persons, singly and in concert, directly and indirectly and aiding and abetting each other, in connection with the purchase and sale of securities by the use of the mails and the means and instrumentalities of interstate commerce have been and are now (1) employing schemes, devices and artifices to defraud, (2) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, and (3) engaging in acts, practices and a course of business which have operated and would operate as a fraud and deceit upon purchasers and sellers of such securities in violation

Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b), and Rule 10b-5, 17 CFR 240.10b-5, thereunder as more fully alleged in paragraphs 2 through 31.

The Dissemination of False and
Misleading Material Information

22. Subsequent to the trading halt by the American Stock Exchange on June 20, 1973, defendants CJV, DOYLE and WISMER continued to disseminate and cause to be disseminated to public shareholders of CJV and others in a series of press releases and otherwise false and misleading statements of material facts, and omissions of material facts concerning the financial condition and business operations of CJV as described hereafter in paragraphs 23 through 30.

23. In a press release of June 22, 1973, numerous untrue statements of material facts and material omissions were made concerning, among other things, the following:

- (a) an alleged statement by a minister of the Government of Panama, allegedly agreeing with and confirming CJV's claim that CJV had discovered one of the "world's largest copper mines" in the Cerro Colorado area of Panama, when in fact no such statement of agreement and confirmation had been made;
- (b) CJV's claim to have delineated one of the world's largest copper mines in the Republic of Panama;
- (c) CJV's present right to exploit any copper discovery in the Republic of Panama, when no such right exists;
- (d) the impact of the Republic of Panama's proposed mining legislation on CJV's right, capacity and ability to exploit any copper discovery in the Republic of Panama;
- (e) CJV's "moving from the exploration stage (of any copper discovery) to that of construction," while in fact whatever construction had taken place was only incidental to exploration;

- (f) the imminence of the beginning of the construction referred to in subparagraph (e), in this paragraph;
- (g) the assurances of long term sales of blister and copper concentrates by CJV to others; and
- (h) the date of the establishment of a mining and milling installation.

23A. Similarly, in a press release of July 5, 1973, issued by Nison Petroleum and Minerals, Ltd., a 60% owned subsidiary of CJV, claims were made regarding the granting by the Government of Panama of a large mineral concession in another area of Panama. The release, among other things, touted that the concession contained "gold, silver and other metals - - - (and) numerous strong gold bearing vein structures." It went on further to tout the size and extent of the "gold bearing vein structures," as well as estimating 115,000 tons of gold bearing ores with a content of "one quarter to one third of an ounce per ton" of gold. Whether there was any basis in fact for such fantastic claims is unknown. No grant of any such concession had been made, a fact admitted by CJV in an October 28, 1973 release. The patent falsity of this release, similar to the others, demonstrates the defendant's proclivity for a lack of candor. This release, like the others, claims that CJV's subsidiaries have the right to exploit the concession. Obviously, it is impossible to exploit something that does not exist.

24. Again, in a press release of July 17, 1973, the pattern continued. Additional untrue and misleading statements of material facts were made concerning:

- (a) the present state of negotiations with the Republic of Panama concerning CJV's right, capacity and ability to exploit any mineral discoveries in the Republic of Panama;
- (b) CJV's present right to exploit any mineral discovery;
- (c) the availability and favorability of forthcoming commercial feasibility studies;

- (d) the granting of mineral concessions to CJV, or its subsidiaries;
- (e) the existence and imminent initiation of a plan to produce copper from its mineral concessions in the Republic of Panama;
- (f) the placing into production of the Cerro Colorado copper project "as soon as possible" without disclosing the dubious nature of CJV's right to produce, the impact of proposed legislation on such production and the need for massive financing to commence such operations;
- (g) the "completion of necessary sales and financing arrangements" related to the Cerro Colorado copper project; and
- (h) the existence of commercially exploitable deposits of copper;
- (i) CJV's intention to start construction of production facilities at its Cerro Colorado deposit in Panama in the month of August.

25. On August 31, 1973, the defendants stepped up the flurry of false and misleading statements by issuing a press release about the proposed use of geological reports to finalize arrangements for the sales of the product of the Cerro Colorado project when in fact no "arrangements" existed which could be "finalized."

26. On September 6, 1973 in furtherance of this fraudulent course of business CJV issued still another press release saturated with materially untrue and misleading statements concerning:

- (a) the ownership interest of "the famous worldwide mining group led by Anglo-American Corporation of South Africa Limited which includes Debeers Consolidated Ltd" which was stated was "now the second largest shareholder of Canadian Javelin

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Limited" when in fact neither this famous worldwide mining group nor DeBeers Consolidated purchased any shares of or had any interest in CJV, and only Anglo-American Corporation purchased the stock in its own name;

- (b) the interest in and ownership by other companies in the activities or stock of CJV;
- (c) the assurances of long-term sales contracts; and
- (d) the location of a plant to smelt the ores that might be produced from the Cerro Colorado discovery.

27. Another instance of violative conduct occurred on September 19, 1973. On that date, a press release was issued that was false and misleading concerning:

- (a) a letter of intent signed by CJV and British Kynoch Metals Limited representing other large European industrial companies "relating to the purchase of the entire initial output of metallic copper (blister) of Javelin's Cerro Colorado copper project in the Republic of Panama." In fact, contrary to the tenor of the release, the letter of intent is merely a letter of intent to negotiate the future purchase of copper;
- (b) the existence and terms of any letters of intent to sell any anticipated mineral production; and
- (c) the time which will pass prior to any copper production from the Cerro Colorado project in the Republic of Panama.

28. The statements made in this continuous chain of hyperbolic press releases reveal the existence of a course of business that would, did and will operate as a fraud and sell it upon present and prospective purchasers and sellers of CJV's securities. The releases taken together

as well as simply, create the impression that CJV:

- (a) has an immediate right to exploit its alleged copper discovery;
- (b) has definitive commercial feasibility studies concerning the mining of the project;
- (c) is "finalizing" and "completing" financial arrangements to begin immediate mining and production of the copper; and
- (d) has "finalized" and "completed" arrangements to sell the entire output of the project.

As set out above, such statements are materially false and misleading. The exact nature of CJV's exploitation rights, if any, is highly speculative. At best, such rights must wait for and be based on a mining code not yet promulgated. Even if such rights exist, the defendants in the releases have led investors to believe that production is imminent. In fact, however, no final commercial feasibility study exists, although it has long been promised and touted; no firm financial arrangements exist, although they have long been characterized as in the "completion stage; and although no agreement exists to sell any eventual product, and only preliminary negotiations have begun, the defendants have led the investing public to believe that sales agreements for the entire product have been completed.

29. As a further part of the fraudulent course of conduct referred to in paragraph 21, the defendants in this Count I from on or before November 1969 until the present disseminated, and caused to be disseminated numerous false and misleading statements about CJV's linerboard mill project located at Stephenville, Newfoundland, and associated wood harvesting operations in Labrador concerning, among other things:

- (a) the size of that project;
- (b) the profits to be derived from that project by the company;

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- (c) the production quality and quantity of the project;
- (d) the requisite financing available and needed for the project;
- (e) the true cost of the project;
- (f) the commercial feasibility of the project;
- (g) certain disputes between the Newfoundland Government and CJV concerning the linerboard and associated wood harvesting project;
- (h) the massive amounts of financing requested and received from the Newfoundland Government;
- (i) the necessity, use, and true disposition of the monies referred to in subparagraph (h); and
- (j) other items of similar purport and object.

30. The striking parallel between these false and misleading statements and those concerning the Panama project in its initial stages raises grave concern regarding CJV's current activities. Similar to the present Panama project, that project was described as one of the world's largest, and one of the most profitable, all in superlative language more fit for suitable use by midway carnival hawkers than responsible officials of publicly held companies.

31. By reason of the activities described in paragraphs 1 through 30 above, defendants CJV, DOYLE and WISMER, singly and in concert, directly or indirectly, violated, are violating, and will violate, or aid or abet others in violating the provisions of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

COUNT II

Violation of Section 17(a) of
the Securities Act, 15 U.S.C. 77q(a)

32. Paragraphs 1 through 30 are hereby realleged and incorporated herein by this reference.

33. Commencing on or before November 1969, and continuing to the date hereof, in the Southern District of New York and in other parts of the United States, defendants CJV, DOYLE and WISMER, and other persons,

directly and indirectly, singly and in concert and aiding and abetting each other, in the offer and sale of securities, by use of the means and instrumentalities of transportation and communication in interstate commerce and the mails, have been and are now (1) employing devices, schemes and artifices to defraud, (2) obtaining money and property by means of untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and (3) engaging in transactions, practices and a course of business which have operated, are operating and would operate as a fraud and deceit on the purchasers and prospective purchasers of such securities, in the manner and means as set forth in paragraphs 22 through 30 above, in violation of Section 17(a) of the Securities Act, 15 U.S.C. 77q(a).

COUNT III

Section 5 of the Securities Act
15 U.S.C. 77e

34. Paragraphs 1 through 30 are hereby realleged and incorporated herein by this reference.

35. Since on or before July, 1958, and continuing to the present, CJV, DOYLE, WISMER, and others, singly and in concert, and aiding and abetting each other have been offering, selling and delivering after sale securities of CJV by the use and means of instrumentalities of interstate commerce, and of the mails.

36. There has never been a registration statement regarding any securities of CJV declared effective by the Commission pursuant to the Securities Act.

37. The common stock of CJV is actively traded on the AMEX and it is believed that approximately 75% of the public float (or in excess of 50% of CJV's outstanding shares) of these securities is held by United States citizens and residents.

38. Plaintiff Commission has repeatedly attempted to ascertain the true nature of the circumstances attendant to the issuance of the securities of CJV, and whether such securities were

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required to be registered. Commission efforts to obtain facts concerning these issues and other allegations contained in this complaint have been impeded by the inability to obtain the testimony under oath of DOYLE regarding CJV's affairs, and the unavailability of relevant witnesses and corporate records within the United States.

39. By reason of these activities, the defendants CJV, DOYLE, and WISMER have violated, are violating and are about to violate Section 5 of the Securities Act, 15 U.S.C. 77e.

COUNT IV

Violation of Section 13(a) of the Exchange Act, 15 U.S.C. 78m(a), and Rules 12b-20, 17 CFR 240.12b-20, 13a-1, 17 CFR 240.13a-1, and 13a-13. 17 CFR 240.13a-13 Thereunder

40. Paragraphs 1 through 30 are hereby realleged and incorporated herein by this reference.

41. Since on or about April 2, 1973 and continuing to the date hereof defendants CJV, DOYLE and WISMER and others singly and in concert, directly and indirectly, and aiding and abetting each other, filed and caused to be filed with the Commission certain reports pursuant to Section 13(a) of the Exchange Act, 15 U.S.C. 78m(a) and certain rules thereunder, which were false and misleading and omitted to state material facts necessary to make the statements made not false and misleading as more fully alleged in subsequent paragraphs of this Count IV.

Form 10-K

42. On April 29, 1973 the defendants filed and caused to be filed with the Commission and the Amex CJV's annual report on Form 10-K for the fiscal year ending December 31, 1972. The annual report misstated material facts and omitted to state certain material facts including but not limited to:

- (a) CJV's claim as a current asset some \$4.3 million allegedly due to CJV from the Government of Newfoundland. CJV did not disclose that the Government of Newfoundland had refused to acknowledge the claim. At no time since the initial assertion of the claim, has CJV taken steps to initiate

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the process of arbitration necessary for them to establish any right to said sum. Without the inclusion of the \$4.3 million as a current asset in the Form 10-K financial statements for the fiscal year ending December 31, 1972, CJV would have reported a working capital position of approximately \$700,000 instead of the reported figure of approximately \$5 million.

By virtue of the above filing the defendants in this Count violated Section 13(a) of the Exchange Act, 15 U.S.C. 78m(a) and Rule 12b-20, 17 CFR 240.12b-20 and Rule 13a-1, 17 CFR 240.13a-1 thereunder.

Form 10-Q's

43. On May 16, 1973 and August 17, 1973, the defendants in this Count II filed and caused to be filed with the Commission and the American Stock Exchange quarterly reports on Form 10-Q for the periods ending March 31, 1973 and June 30, 1973, respectively, in violation of Section 13(a) of the Exchange Act, 15 U.S.C. 78m(a), and Rule 13a-13, 17 CFR 240.13a-13 and Rule 12b-20, 17 CFR 240.12b-20, thereunder. These reports contained statements of material facts which were false and misleading and omitted to state material facts necessary to make the statements made not false and misleading with respect to the claim by CJV as a current asset the \$4.3 million as explained in paragraph 42 above.

44. These false financial statements greatly enhanced the appearance of CJV's working capital position at a time when CJV was making an offering of securities and attempting to obtain additional financing for the Panama project.

NEED FOR A SPECIAL RECEIVER

45. Defendant CJV is now directed, managed and controlled by the defendants DOYLE and WISMER, and others, who were its dominating officers and directors at the time when the violations alleged in Counts I through IV occurred. As set out above the defendants have totally abrogated their

due to the shareholders of CJV and the investing public. Defendant DOV, the dominant control person of defendant CJV has refused to give sworn testimony concerning CJV's financial status and business operations. Other key persons have been equally unavailable. This factor, coupled with CJV's history of issuing materially inaccurate and misleading press releases and filing materially inaccurate and misleading documents with the Commission reveals an abysmal pattern of total disregard for the defendants' obligations under the securities laws.

46. Unless an independent person is authorized by court order to see that the defendant CJV's reporting obligations are met and has control over the dissemination of information to the investing public, the defendants will continue their violative conduct and CJV's shareholders and others will be continually (1) deprived of material information concerning CJV's financial status and business operations; (2) forced to rely on the defendants' false and misleading statements concerning CJV's activities; and (3) will be denied the material information necessary to make any informed investment decision.

47. Additionally, due to the extensive foreign operations of the defendant CJV, a special receiver is needed to inquire into these operations wherever located and the financial status of CJV in order to report his findings to the Court and the Commission and to cause CJV to file with the Commission all amendments necessary to make CJV's filings comply with the federal securities statutes.

48. Furthermore, to protect investors a special receiver is also needed to inquire into and account for all prior sales of securities by CJV and to report to this Court and the Commission all material undisclosed facts concerning the issuance of these securities and whether or not the issuance of said securities was exempt from the registration provisions of the Securities Act.

WHEREFORE, plaintiff Commission respectfully demands:

I

A preliminary injunction and a permanent injunction enjoining defendant CJV, its officers, agents, servants, employees, directors,

successors, assigns, affiliates, subsidiaries and attorneys and defendants DOYLE and WISNER, their agents, servants, employees, attorneys, successors and assigns, and each of them and their persons in active concert or participation with them, directly or indirectly, in connection with the offer, or purchase, or sale of securities, issued or to be issued, by defendant CJV, its subsidiaries or affiliates, or the securities of any other issues, making use of the means and instrumentalities of interstate commerce or of the mails to:

A. Obtain money or property by making, or to make, materially false and misleading statements or to omit to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, concerning but not limited to:

- (1) the financial condition of CJV, its subsidiaries or affiliates;
- (2) CJV's negotiations concerning the right, capacity and ability to exploit any mineral discovery;
- (3) CJV's right to exploit any mineral discovery;
- (4) the existence of any commercial feasibility study related to CJV's various business activities;
- (5) the granting of mineral concessions to CJV, its subsidiaries, or affiliates;
- (6) the potential impact of legislation which may adversely affect CJV's business activities;
- (7) the stages of discussions with others to arrange for financing of CJV's various projects;
- (8) the stages of discussions with others to arrange for the sale of the products of CJV's various projects;
- (9) the interest of and ownership by others in the activities or stock of CJV;

- (10) the terms, conditions and timeliness of contract or letters of intent with others;
 - (11) the anticipated time needed before production on CJV's various activities can be meaningfully commenced;
 - (12) the size of its various projects and developments;
 - (13) the profitability of its various enterprises;
 - (14) the requisite-financing needed and available for any project or activity;
 - (15) the relationship of CJV with various governments;
 - (16) the business operations and capabilities of CJV, its subsidiaries, or affiliates; and
 - (17) other items of similar purport and object.
- B. Employ any device, scheme or artifice to defraud.
- C. Engage in any act, practice or course of business which operates or would operate as a fraud and deceit upon any person.

II

A preliminary and permanent injunction restraining and enjoining the defendant CJV, its officers, directors, subsidiaries and affiliates, agents, servants, employees, successors and assigns and defendants DOYLE and WISMER, their agents, servants, employees, attorneys, successors and assigns and each of them from, directly or indirectly, singly or in concert making use of the mails or the means and instruments of transportation and communication in interstate commerce, in the absence of applicable statutory exemptions;

- (a) to sell the securities of CJV or the securities of any other issuer through the use or medium of any prospectus or other security or to carry or cause to be carried any security for the purpose of sale or delivery after sale, unless and until a registration statement is in effect with the Commission with respect to such securities; and

- (b) to offer to sell the securities of CJV or the securities of any other issuer through the use or medium of any prospectus or otherwise unless and until a registration statement has been filed with the Commission with respect to such securities.

III

A preliminary and permanent injunction restraining and enjoining defendant CJV, its officers, agents, servants, employees, directors, successors, assigns, affiliates, subsidiaries and attorneys, and defendants DOYLE and WISMER, their agents, servants, employees, attorneys, successors and assigns, and each of them and those persons in active concert or participation with them from filing materially false and misleading annual and other periodic reports required to be filed with plaintiff Commission pursuant to Sections 13(a) and (b) and 15(d) of the Exchange Act.

IV

That this court exercise its jurisdiction over the activities of CJV to appoint a special receiver for CJV and authorize said receiver to take all necessary action to protect the interests of CJV, its shareholders and creditors with respect to the transactions set forth in this complaint or arising therefrom, including but not limited to the power to take appropriate steps to insure that CJV:

- (1) makes continuing full, complete and accurate public disclosure of all material events and facts concerning its activities;
- (2) makes timely and accurate filing of reports with the plaintiff Commission in conformity with Sections 13(a) and 15(d) of the Exchange Act and the rules promulgated thereunder including any necessary amendments; and
- (3) inquires into and accounts for all prior sales of its securities and thereafter reports to this Court and the

Commission all material facts concerning the issuance of those securities, and to set up procedures to assure prior to any future sales of securities compliance with the registration provisions of the Securities Act of 1933.

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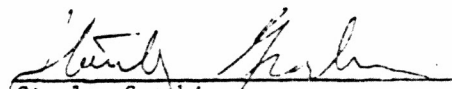
That this Court issue a mandatory injunction requiring defendant CJV to correct and amend its annual and periodic reports currently on file with the Commission so that they comply with the securities laws.

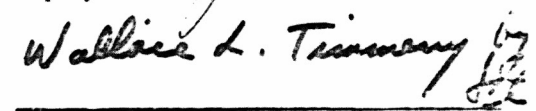
VI


That this Court issue a mandatory order requiring defendant John C. Doyle to report to this Court and the Commission on a periodic basis all his transactions in the securities of CJV and its affiliates.


AND, for such other, further and different relief as this Court deems appropriate.

Respectfully submitted,

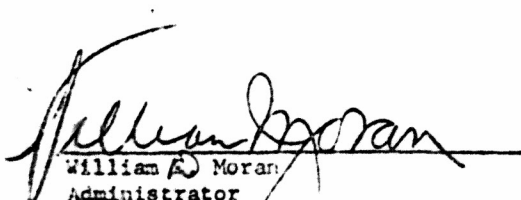

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STATE OF NEW YORK)
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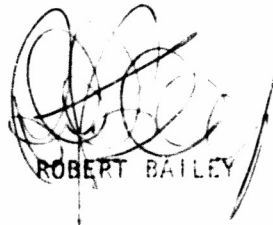
ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 216 Richmond Avenue, Staten Island, N. Y. 10302. That on the 7 day of Jan. 1976 deponent served the within ~~Ex~~ *left* upon 1977

Wolf, Popper, Ross, Wolf & Jones, Esqs.
Diamond & Golomb, P.C. and
Steptoe & Johnson, Esqs.


attorney(s) for
Appellees

in this action, at
845 Third Ave., New York, NY 10022;
99 Park Ave., NYC 10016 and
1250 Connecticut Ave., N.W., Washington, D.C. 20036

the address(es) designated by said attorney(s) for that purpose to receive
2 copies of same enclosed in a postpaid properly addressed wrapper, to an
official depository under the exclusive care and custody of the United States
post office department within the State of New York.


ROBERT BAILEY

Sworn to before me, this 7 day
of Jan. 1977


WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1978